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Technical assistance and capacity-building

The situation of human rights in Afghanistan and technical assistance achievements in the field of human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is being submitted pursuant to Human Rights Council decision 2/113 and resolution 14/15. It describes the human rights situation in Afghanistan from January to November 2016 and provides an overview of the core work and technical assistance conducted by the Human Rights Unit of the United Nations Assistance Mission in Afghanistan in cooperation with the Office of the United Nations High Commissioner for Human Rights.

The report focuses on the five principal areas of work of the Unit, namely: protection of civilians in armed conflict; human rights and the protection of children in armed conflict; the elimination of violence against women, increasing women's participation in peacebuilding and security, and gender equality; the prevention of torture and arbitrary detention; and the integration of human rights into peace and reconciliation processes.

The report concludes with concrete recommendations to the Government, anti-government elements and the international community.

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I. Introduction

1. The present report is being submitted pursuant to Human Rights Council decision 2/113 and resolution 14/15. It covers the period from January to November 2016 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA).

2. The report focuses on the five principal areas of work of the UNAMA Human Rights Unit, namely: protection of civilians in armed conflict; human rights and the protection of children in armed conflict; the elimination of violence against women, increasing women's participation in peacebuilding and security, and gender equality; the prevention of torture and arbitrary detention; and the integration of human rights into peace and reconciliation processes.

3. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide support to the human rights mandate of UNAMA, and the Director of the UNAMA Human Rights Unit represents the United Nations High Commissioner for Human Rights in Afghanistan.

II. Context

4. In 2016, the political and security situations remained fragile. Fighting intensified during the second quarter of the year and continued at high levels for the remainder of the reporting period. The Government of Afghanistan and its international partners attempted to reverse the gains made by the Taliban and other anti-government elements. Civilian casualties from conflict-related violence remained high. Planned reductions in foreign force levels were adjusted to retain a greater presence than originally envisioned. In July, the North Atlantic Treaty Organization (NATO) announced continued support for Resolute Support Mission beyond 2016, with force contributions and donations to forces of the Government of Afghanistan.[1]

5. On 29 September, the Government of Afghanistan and Hizb-i Islami Gulbuddin signed a peace agreement. On 4 and 5 October, at an international donor conference in Brussels, €13.6 billion were pledged for development assistance in 2017-2020, but little to no reference was made to human rights.

III. Protection of civilians

6. Civilians continued to suffer from the consequences of the armed conflict. The increasing number of offensives by anti-government elements, including the Taliban, against government-controlled population centres, combined with the expansion of newly emerging armed opposition groups and indications of resurgent pro-government armed groups in parts of the country, further complicated efforts to protect civilians.

7. From January to November 2016, civilian casualties from conflict-related violence increased by 1 per cent over the same period in 2015. While overall civilian casualties remained comparable to the high levels recorded in 2015, child casualties increased by 20 per cent and women casualties decreased by 8 per cent.

[1] See www.nato.int/cps/en/natohq/official_texts_133171.htm?selectedLocale=en.

8. During the reporting period, UNAMA/OHCHR documented 10,533 civilian deaths and injuries of men, women and children. UNAMA/OHCHR attributed 62 per cent of that total to anti-government elements and 24 per cent to pro-government elements comprised of the Afghan National Defence and Security Forces, pro-government armed groups and international military forces; 10 per cent resulted from ground engagements between pro-government forces and anti-government elements but could not be attributed to a specific party to the conflict; and the remaining 4 per cent resulted mainly from explosive remnants of war that could not be attributed to any party.

9. UNAMA/OHCHR recorded decreases in civilian casualties from targeted and deliberate killings and from improvised explosive devices. However, civilian casualties caused by explosive remnants of war increased by 76 per cent, while those resulting from air strikes increased by 86 per cent. As in 2015, UNAMA/OHCHR documented a decrease in civilian casualties in all regions except the central, southern, northern and western regions.

10. On 3 October, in the north-east, the Taliban launched an attack on Kunduz, capturing a significant part of the city and sparking nearly two weeks of urban fighting that continued until 12 October, when Government forces announced they had regained control of the entire city. UNAMA/OHCHR verified that, between 3 and 12 October, 52 civilian men, women and children were killed or injured, and it has continued to investigate allegations of an additional 99 civilian casualties. The majority of the casualties resulted from ground fighting between Taliban fighters and Afghan security forces. In other areas, attacks by anti-government elements on territories under government control persisted, with the attempted takeover of the capitals of Farah, Helmand and Uruzgan provinces. Civilian casualties and the displacement of populations were recorded in each of those locations.

11. In 2016, UNAMA/OHCHR documented an overall 10 per cent increase countrywide in the number of civilian casualties resulting from complex and suicide attacks, mainly attributed to several large attacks in Kabul, where civilian casualties resulting from such tactics increased by 77 per cent.

12. Islamic State in Iraq and the Levant (ISIL/Da'esh) — Khorasan Province[2] claimed responsibility for a suicide attack against a peaceful demonstration by civilians belonging to the Hazara community held in Kabul on 23 July. During the attack, 85 civilians were killed and 413 injured. It was the deadliest single incident recorded by UNAMA/OHCHR since 2009, when UNAMA first began recording civilian casualties. Moreover, it was one of four attacks against the Shia minority during the reporting period.[3]

13. In 2016, UNAMA/OHCHR released three public reports on the situation of civilians, highlighting civilian deaths and injuries, analysing key trends and making recommendations to all parties to the conflict.[4]

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[2] All factions of the self-identified "Islamic State" are commonly referred to in Afghanistan as "Da'esh", after the Arabic acronym.

[3] The other incidents are outlined in sect. III. A.

[4] See https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf, https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2016_final_rev.1-9sept.pdf, https://unama.unmissions.org/sites/default/files/19_october_2016_-_un_chief_in_afghanistan_renews_call_for_parties_to_protect_civilians_english.pdf and https://unama.unmissions.org/sites/default/files/23_july_suicide_attack_against_peaceful_demonstration_-_18_oct_2016.pdf.

A. Anti-government elements

14. Between January and November 2016, UNAMA/OHCHR attributed 62 per cent of the total number of civilian casualties, namely 6,496 civilians (1,958 of whom died and 4,538 of whom were injured), to anti-government elements. The term "anti-government elements" is used to refer to a wide range of armed groups, including the Taliban, Da'esh and Hizb-i Islami. That figure represents a 1 per cent decrease in total civilian casualties attributed to such groups compared with the same period in 2015.

15. Although improvised explosive devices remained the second leading cause of civilian casualties, UNAMA/OHCHR documented a 13 per cent decrease in civilian casualties from such devices (a similar decrease was recorded in 2015), with 1,984 civilians dying or suffering injuries. Improvised explosive devices accounted for 19 per cent of all civilian casualties, while complex and suicide attacks and improvised explosive devices together accounted for 37 per cent of the total. The Taliban claimed responsibility for a complex attack against the VIP Security Directorate in Kabul on 19 April 2016, when the detonation of a truck laden with heavy explosives killed 56 civilians and injured 337 others. On 20 June, anti-government elements detonated a remote-controlled improvised explosive device in a market area in the Kishem district of Badakhshan Province, killing 12 civilians and injuring 36 others. No group claimed responsibility for the attack.

16. Anti-government elements continued targeting civilians who worked for or were perceived to support government and international military forces. During the reporting period, UNAMA/OHCHR recorded 1,078 deaths and injuries resulting from targeted and deliberate attacks on civilians — a 21 per cent decrease compared with the same period in 2015. On 5 March, in Kandahar city, anti-government elements shot and killed a custodian in front of the mosque where he worked. The Taliban claimed responsibility for the incident, alleging that the victim was working with the intelligence services.

17. UNAMA/OHCHR documented a 27 per cent increase in civilian casualties related to attacks by anti-government elements against religious figures and places of worship in the first 10 months of 2016 compared with the same period in 2015. In total, 290 deaths and injuries related to such incidents were recorded in 2016, with the majority resulting from targeted killings.

18. UNAMA/OHCHR documented two attacks against Shia worshippers gathered to mark the Muslim day of remembrance, Ashura. On 11 October, a suicide attacker wearing an Afghan National Police uniform fired indiscriminately at worshippers at the Karte Shakhi Shia shrine and mosque in Kabul, killing 19 people, including 4 women and 2 children, and injuring another 60, including 25 women and 4 children. The number of casualties could have been higher had Afghan security forces not shot the attacker dead before he could detonate his suicide vest. Da'esh claimed responsibility for the incident. On 12 October, a remote-controlled improvised explosive device was detonated at the entrance of a mosque in the Balkh district of Balkh Province, killing 18 civilians (11 men and 7 children) and injuring 67 others (31 men and 36 children). UNAMA/OHCHR documented two further incidents targeting Shia Muslims. On 21 November, a suicide attacker detonated a body-borne-improvised explosive device at a mosque in Kabul, killing 40 male civilians and injuring 74 other males. Da'esh claimed responsibility for the attack. On 22 November, anti-government elements detonated a remote-controlled improvised explosive device at the Razaiya mosque in Herat city, injuring four male worshippers. No group claimed responsibility for that act.

19. Furthermore, UNAMA/OHCHR documented numerous instances of abductions of civilians from the Hazara community by anti-government elements. Discriminatory intent based on ethnicity or religion was not reported as one of the motives for such acts as holding hostages for ransom or exchanging detainees; among the reported motives for such

acts were suspicion of support to the Government or of membership in the Afghan National Defence and Security Forces. Between 1 and 17 June, anti-government elements in a Taliban-controlled area of the Sancharak district, Sari Pul Province, abducted 22 civilians of Hazara ethnicity, including 3 women and 1 child. On 29 August, anti-government elements abducted five Hazara men in the Chora district of Uruzgan Province; all five were eventually released following the intervention of local tribal elders.

B. Pro-government elements

20. During the reporting period, UNAMA/OHCHR attributed 2,493 civilian deaths and injuries to pro-government forces, which represents a 44 per cent increase compared with 2015. The rise resulted from an increase in offensive operations and counter-attacks by the Afghan National Defence and Security Forces against anti-government elements in or around civilian-populated areas. In a continuation of the trend documented in 2015, 47 per cent of civilian casualties caused by pro-government forces during the reporting period resulted from the use of explosive weapons, mainly mortars, rockets and grenades. On 3 November, Afghan National Defence and Security Forces fired mortar rounds targeting a Taliban position in Khwaja Sabz Posh district, Faryab Province. One of the rounds landed in a civilian compound where a wedding party was taking place, killing 12 civilians, including 6 girls and 4 boys, and injuring 13 others, including 10 girls.

21. UNAMA/OHCHR documented an 86 per cent rise in civilian casualties from air strikes by pro-government forces compared with the same period in 2015. Such incidents caused 548 civilian deaths and injuries, equal to 5 per cent of all civilian casualties. Air strikes by the Afghan air force caused the majority of such casualties (218). On 27 October, the Afghan National Army conducted an air strike targeting Taliban fighters in Dehrawud district, Uruzgan Province, killing four civilians. On 2 November, international military forces carried out an air strike against the Taliban in Kunduz city that killed 32 civilians and injured 36 others, mostly women and children.

22. On 26 January 2016, responsibility for the Civilian Casualty Avoidance and Mitigation Board was transferred from NATO to the Government of Afghanistan. UNAMA/OHCHR encouraged the Government to ensure that the Afghan-led Board functioned as a focused, operational mechanism to identify areas for improving civilian casualty mitigation efforts and welcomed support from the international community to strengthen it. The Board drafted a national policy on civilian casualty mitigation and established a working group to draft an action plan for implementing it. The first meeting of the working group was held on 2 October. UNAMA is a member of the working group and provides technical support on international law and practices.

23. UNAMA/OHCHR also welcomed initiatives by the Government to mitigate civilian casualties. In particular, in 2016, the Government approved the above-mentioned national policy on civilian casualty mitigation. It further established a senior-level working group designed to facilitate a policy-driven dialogue on existing protection-of-civilians concerns and to support the implementation of improved practices to reduce civilian casualties. The Chief Executive of the National Unity Government chairs the working group, which first met on 30 June 2016.

IV. Children and armed conflict

24. From January to November 2016, the country task force on monitoring and reporting on children and armed conflict verified 1,501 incidents of killing and maiming (from 1,754 reported incidents), which represents a 23 per cent increase compared with the

same period in 2015. The task force verified that at least 820 boys and girls had been killed and 2,344 boys and girls had been injured. On average, more than 66 children were killed or injured each week, compared with 55 in 2015.

25. In 2016, ground engagements accounted for more than 50 per cent of child casualties, with 1,602 boys and girls killed or injured. Explosive remnants of war were the second leading cause of child deaths and injuries, for a total of 531 casualties, and improvised explosive devices followed, causing 509 child casualties. Air strikes killed and injured 183 children, compared with 59 in 2015. On 25 July, in Achin district, Nangarhar Province, international military forces conducted an aerial attack against a Da'esh post inside a residential area. One of the rounds fired missed the target and struck a nearby residence, killing four civilians, including one girl.

26. Targeted killings resulted in 138 child casualties and suicide attacks by anti-government elements caused 129 child casualties, with the highest numbers recorded in the central region with 70 child casualties. The mission recorded 72 incidents involving children, mainly threats, intimidation and abductions.

27. Anti-government elements perpetrated 42 per cent of all verified child casualties; 32 per cent were committed by pro-government forces. Another 15 per cent of child casualties could be attributed to both anti- and pro-government forces, while the remaining 13 per cent could not be attributed to any party to the conflict.

28. Between January and September 2016, the country task force on monitoring and reporting verified 61 reports of incidents affecting education and education-related personnel, which represents a decrease of 53 per cent compared with the same period in 2015. Incidents affecting access to education included deliberate targeting and incidents that impeded access to education, including burning, improvised explosive device placement or detonation on school premises, abduction, threats, intimidation and harassment of education or education-related personnel, and the military use of schools. The task force attributed 54 incidents to anti-government elements and 5 incidents to pro-government elements, while 2 other incidents could not be attributed to any party to the conflict. In addition, the task force documented 15 incidents involving the military use of schools and of a teacher-training centre. Of those attacks, 12 were attributed to Afghan National Defence and Security Forces, 2 to the Taliban and 1 to pro-government militias.

29. Between January and September 2016, the country task force on monitoring and reporting verified 80 reports of attacks, threats and incidents affecting hospitals and health personnel, of which 70 were attributed to anti-government elements. The incidents occurred in the context of ground engagement and targeted attacks and included intimidation, threats, harassment, abduction of health or health-related personnel, search operations and the military use of health facilities. On 16 April, in the Nazyan district of Nangarhar Province, Da'esh militants issued written threats to force the staff of the Dwa Khwly Basic Health Centre to leave, then occupied and looted the facility, taking equipment. The task force also verified 14 incidents of the military use of health facilities, 9 of which were attributed to Afghan National Defence and Security Forces, 2 to the Taliban, 2 to undetermined armed groups and 1 each to the Taliban and the Afghan National Defence and Security Forces.

30. The country task force on monitoring and reporting verified 39 incidents of underage recruitment, involving 66 boys mainly used for planting improvised explosive devices, transporting explosives, carrying out suicide attacks and spying. That figure represents an increase in the number of children used or recruited in comparison with 2015, when the recruitment and use of 48 children was reported and verified. The task force attributed the recruitment of 56 boys to anti-government elements and the recruitment of 10 boys to pro-government forces. As an illustration, on 8 July 2016, in the Gardez district of Paktya Province, anti-government elements recruited a 13-year-old boy from a local

madrassa to conduct a suicide attack. The child was killed when he tried on the suicide vest in his house.

31. The country task force on monitoring and reporting documented nine incidents of abduction, involving at least 23 children. Anti-government elements perpetrated six of those abductions, of which the task force attributed five to the Taliban. The Afghan National Defence and Security Forces perpetrated the remaining incident, on 19 September 2016, in the Alishing district of Laghman Province, when seven children between 7 and 16 years of age and a logistics officer from Shamsakhail School were abducted in response to the abduction of an Afghan National Army soldier by the Taliban. Community elders intervened and negotiated the release of all the abductees.

32. The country task force on monitoring and reporting verified three incidents of rape and sexual violence against four boys and one girl, of which two were perpetrated by the local police and one by the Taliban.

33. Anti-government elements continued to deny humanitarian access to areas under their control. The country task force on monitoring and reporting verified 70 such incidents, which represents a 19 per cent decrease compared with 2015, when 86 such incidents were verified. Incidents included abduction, intimidation, killing and injury of humanitarian staff (mostly deminers), denial of access to providers of vaccines and damage to facilities run by humanitarian organizations. The task force attributed 94 per cent of those incidents to anti-government elements.

34. On 18 April, UNAMA/OHCHR, in conjunction with the United Nations Children's Fund (UNICEF), released *Education and Healthcare at Risk: Key Trends and Incidents Affecting Children's Access to Healthcare and Education in Afghanistan*.[5] The report documents how, between January 2013 and December 2015, conflict-related violence, combined with threats and intimidation by all parties to the conflict, harmed health and education personnel, reduced the availability of health care and limited children's access to essential health services and education.

35. The country task force on monitoring and reporting noted significant progress from the Ministry of the Interior with regard to the expansion of child protection units in Afghan National Police recruitment centres. Between January and November 2016, the Afghan National Police inaugurated 12 additional child protection units, bringing the total number of such units in the country to 17.

36. On 18 June 2016, the Ministry of the Interior published a directive prohibiting the exposure in the media of children arrested on national security charges. On 4 June and 4 July respectively, the Ministry of Education issued two directives to all security-related ministries highlighting the commitment of Afghanistan to the Safe Schools Declaration and calling on the security forces to stop using schools for military purposes. On 2 July, the National Directorate for Security issued a directive prohibiting children from being held in its detention facilities and from being transferred to adult prisons.

37. On 3 September 2016, in coordination with the Afghanistan Independent Human Rights Commission and the Herat Department of Information and Culture, UNAMA hosted a film festival on the effects of armed conflict on children. Thirty-two entries were submitted, including by women and members of disabled communities in Herat and Badghis provinces. A 16-year-old female student from Herat Province directed and produced the winning film.

[5] See https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf.

V. Protection from arbitrary detention and respect for fair trial rights

38. The treatment of conflict-related detainees remained of major concern during the reporting period. Based on interviews with several hundred conflict-related detainees, including juveniles held by the National Directorate of Security, the Afghan National Police and the Afghan National Army in 26 provinces, UNAMA found that the detainees had experienced torture or ill-treatment at levels exceeding those documented in its 2015 public report.[6] In most cases, the authorities used torture and ill-treatment to extract a confession. While the majority of documented cases related to incidents allegedly carried out in National Directorate of Security facilities, UNAMA also noted a significant increase in the use of torture and ill-treatment by the Afghan National Police. Since December 2015, the Government has made little tangible progress in meeting its commitments under the 2015 national plan on the elimination of torture. Notably, accountability persists for alleged perpetrators of torture and ill-treatment.

39. At the time of writing, the Ministry of Justice was finalizing the draft of a new anti-torture law, providing an opportunity to align the definition of torture with the international human rights obligations of Afghanistan. Despite the public commitments that the President has made since June 2015, the Government has yet to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

40. The United Nations High Commissioner for Human Rights notes with concern the increasing restrictions placed by the Government on access by UNAMA human rights staff members to detention facilities, to monitor the treatment of conflict-related detainees. In September and October 2016, the Central Prisons Directorate of the Ministry of the Interior suspended the authorization for UNAMA to access its facilities to interview detainees. In addition, since mid-August 2016, UNAMA has been formally denied access to interview prisoners on death row.

41. In mid-2016, the National Assembly rejected article 10 of Presidential Decree 76, which had provided for the preventive detention, in a "special facility", of individuals suspected of posing an actual or potential threat to national security. Other problematic articles of the decree remain in force, however, including those which extend to 60 days the time limit before which those arrested for crimes against national security must be brought before a judge.

VI. Question of the death penalty

42. On 8 May 2016, six convicted prisoners previously sentenced to death for crimes under national security laws were executed. UNAMA/OHCHR continued to advocate for respect of the fair trial guarantees provided for in the Constitution, the Criminal Procedure Code and the International Covenant on Civil and Political Rights, particularly given ongoing concerns over the torture and ill-treatment of detainees. OHCHR also urged the President of Afghanistan to refrain from approving death sentences, to introduce an immediate official moratorium on the use of the death penalty and to expedite legal reform, including of the Penal Code and the Criminal Procedure Code, to allow death sentences to be commuted to life imprisonment.

[6] See http://unama.unmissions.org/sites/default/files/unama_detention_report_2015_revised.pdf.

VII. Violence against women and promotion of women's rights

43. The Government continued its efforts to address violence against women and girls. On 31 January 2016, the President inaugurated a fund specifically for sponsoring emergency services, such as medical treatment and temporary accommodation, for women survivors of life-threatening acts of violence. Increased funding is critical to ensuring that the fund can offer appropriate support to all those in need. On 11 June, the Government approved the 2016-2020 strategy and action plan on the elimination of violence against women, which, at the time of writing, were yet to be disseminated.

44. The prevalence of violence against women and harmful practices remained of serious concern. From January to November 2016, UNAMA/OHCHR documented 10 punishments that were handed down by a parallel justice system run by anti-government elements to women accused of so-called moral crimes (such as sexual intercourse outside of marriage and prostitution). The judgments resulted in the execution of four women and the lashing of five women, in several provinces. In addition, attempts by anti-government elements to implement a sentence of stoning against a woman in Takhar Province in June were averted following a negotiation by elders. The imposition of the death sentence and corporal punishment on women and girls for perceived moral offences mostly took place in areas under Taliban control or influence. Such practices violate the Constitution, constitute criminal acts under domestic law and amount to human rights abuses.

45. From January to November 2016, UNAMA/OHCHR documented 605 alleged cases of violence against women, including murders, forced immolation, honour killings, rapes, battery and laceration, and forced marriages. In 118 of those cases, the victims were minors. While the majority of cases were still pending, at least 86 cases, mostly involving battery and laceration, had been the subject of mediation by the competent institutions (57), traditional justice mechanisms (21) or non-governmental organizations (8), in accordance with article 39 of the 2009 law on the elimination of violence against women. Focus group discussions carried out by UNAMA at the grass-roots level with 686 women and 126 mediators on their experiences of mediating cases of violence revealed the need to standardize the approach and oversight mechanisms to ensure the protection of the rights of women survivors.

46. UNAMA/OHCHR continued to advocate for prevention and response efforts to be based on human rights. However, law enforcement officials admitted to UNAMA/OHCHR that they were unable to investigate incidents of violence against women and to apprehend alleged perpetrators in areas under the control of anti-government elements. As a result, the conflict has contributed to a culture of impunity whereby victims are denied the right to effective remedies, including gender-sensitive reparations. The situation has further eroded the already weak public trust in the ability of the authorities to enforce the rule of law, particularly with respect to acts of violence against women.

47. The Government continued its work on revising the Penal Code with the aim of submitting the entire revised law to the National Assembly by December 2016. UNAMA/OHCHR worked closely with the United Nations and civil society in advocating for the integration of international human rights norms into efforts aimed at increasing the protection of women from violence.

48. Despite some progress, women continued to face severe obstacles in participating in political, economic and social life owing to several factors, such as widespread violence, explicit restrictions imposed by anti-government elements and the existence of deep-rooted discriminatory social norms that discourage women from exercising their rights. Those social barriers deter women from taking jobs entailing close interaction with men. Threats and attacks targeting women in prominent positions continued in 2016. Among other

incidents, the Head of the Department of Women's Affairs in the city of Ghazni was attacked by unknown assailants on 26 July 2016.

49. Harassment of women in the workplace, including sexual harassment, remained of concern. Pursuant to the 2015 regulation on the elimination of harassment against women, committees have been established in several provinces to prevent and respond to incidents of harassment. UNAMA/OHCHR was instrumental in advocating for the prompt establishment of such committees and disseminating their terms of reference. On 9 November, the Wolesi Jirga (the lower house of parliament) approved a law on the elimination of harassment against women and girls.

50. At the end of October 2016, women's presence in the Afghan National Police increased to 2,880, equal to only approximately 1.8 per cent of the total force. Consultations carried out by UNAMA/OHCHR in June 2016 with 314 women police officers and Afghan National Police officials in 19 of the country's 34 provinces revealed that measures taken by the Ministry of the Interior to integrate women into the Afghan National Police had produced observable progress in the professionalization and empowerment of women police officers. Concerns remain, however, regarding their protection, particularly their harassment in the workplace, and regarding the implementation of gender policies at the district level. UNAMA/OHCHR shared the findings of that consultation and related recommendations with the Government and donors.

51. On 11 July 2016, the Ministry of the Interior established a complaint mechanism to prevent and respond to sexual harassment against women police officers. UNAMA/OHCHR were among the four international organizations asked to provide technical support to the mechanism, which was due to hold its first meeting before the end of 2016.

52. The Government stepped up efforts to ensure women's representation in the public sphere. Notably, the election law that was approved on 22 August 2016 and published on 25 September contains temporary special measures, such as reserving at least 25 per cent of seats for women representatives in the provincial, district and village councils. However, numerous obstacles continue to hamper women's entry and increased representation in Government institutions.[7]

53. On 3 February 2016, the Government identified the former governor of Bamyan Province and current adviser to the Chief Executive on women's rights, Dr. Habiba Sarabi, as the person to represent women in the negotiating team for future peace talks. She was also appointed, on 21 February 2016, as one of six deputies to the new head of the High Peace Council.[8] In addition, joining four male advisers, two women — the director of the Afghan Women's Network and a presidentially appointed Senator — were asked to play an advisory role to the Council. The Afghanistan peace and reconciliation strategy envisions a 30 per cent participation by women in the Council at both the central and local levels. UNAMA/OHCHR provided technical support to the female member of the Council on strategies aimed at achieving an inclusive peace process based on women's meaningful participation, including through the integration of women's voices, experiences and recommendations.

[7] Afghanistan, Ministry of Women's Affairs, "Workplace obstacles: analysis and recommendations", (2016).

[8] The Afghanistan High Peace Council is part of the Afghanistan Peace and Reintegration Programme, established on 5 September 2010 by former President Hamid Karzai to promote peace in Afghanistan.

54. The Government also developed plans to implement, monitor and evaluate the national plan on Security Council resolution 1325 (2000) on women and peace and security, the funding of which remained under discussion. Swift implementation is of paramount importance for ensuring women's effective participation in building sustainable peace and security.

55. Throughout the year, UNAMA/OHCHR conducted promotional activities to raise public awareness of women's rights. In cooperation with national institutions and civil society, UNAMA/OHCHR reached over 1,000 Afghans in Herat, Farah, Zabul, Balkh, Baghlan and Khost provinces through presentations, round tables and debates on women's rights. In October and November 2016, UNAMA/OHCHR trained 447 members of "policewomen councils" working in 16 provinces, including at the district level, on human rights and domestic legal frameworks protecting women from violence.

56. On 26 October 2016, in Kabul, the United Nations chaired the annual global open day event on Security Council resolution 1325 (2000) under the theme "Women and violent extremism in Afghanistan", alongside 13 regional open day events held across the country between September and November. More than 400 participants, over half of whom were women from civil society, recognized women's crucial role in fostering a peaceful society and challenging radical ideologies to prevent members of their communities and families from becoming violent extremists.

57. UNAMA/OHCHR contributed to the holding of the fourth edition of the international women's film festival, held in Kabul from 19 to 22 October 2016. The festival promoted greater public awareness of the status of women and girls in Afghanistan and worldwide through film screenings and debates.

VIII. Peace and reconciliation, including accountability and transitional justice

58. On 22 September 2016, the Government signed a peace agreement with the armed group Hizb-i Islami led by Gulbuddin Hekmatyar. Under the terms of the agreement, Hizb-i Islami is obliged to dissolve its military and paramilitary structures, to ensure a permanent ceasefire and to recognize and implement the Constitution. The United Nations High Commissioner for Human Rights has noted with concern, however, that the agreement provided immunity for the leadership and members of the organization with regard to past political and military actions. In addition, the agreement provides for the integration of Hizb-i Islami fighters into the Afghan security forces without a vetting process for determining their possible involvement in past violations. The High Commissioner has reminded the Government of its obligations under international law, which prohibits blanket amnesties preventing the prosecution of individuals who may be criminally responsible for serious violations of international human rights law and international humanitarian law, including war crimes and crimes against humanity. Furthermore, the High Commissioner has urged the Government to ensure that the rights of victims and their families are made central to any peace process for, if they are not, peace and reconciliation will not be sustainable.

59. UNAMA/OHCHR continued to monitor peace and reconciliation efforts and to encourage the meaningful inclusion of civil society in the peace process. Following the efforts made by UNAMA/OHCHR in 2015 as part of the Afghan People's Dialogue on Peace, which involved the provision of support to civil society through the establishment of provincial civil society advocacy committees and a national steering committee, in 2016 the provincial advocacy committees called for the implementation of the recommendations contained in the provincial road maps for peace, which were based on countrywide

consultations with over 4,500 Afghans. Efforts were made to achieve gender balance during consultations but the results of those efforts were uneven across the regions. Overall, 67 per cent of the participants in the consultations were men and 33 per cent were women. Committee members reported, however, that the deteriorating security situation impeded their rights to freedom of movement and freedom of expression. Specifically, their access to many districts and communities was hindered and their ability to advocate freely for accountability and human rights protection was affected. Acting as the secretariat of the Afghan People's Dialogue on Peace, UNAMA/OHCHR provided technical assistance to the civil society provincial advocacy committees and the national steering committee for the finalization of the 34 provincial road maps for peace, which have led to progress in good governance in some provinces and have the potential to pave the way for a sustainable peace.

60. Furthermore, UNAMA/OHCHR continued to support civil society, to monitor the situation of human rights defenders, civil society and media workers and to work with the Government to encourage measures to ensure that civil society space is preserved, protected and respected. In partnership with the Afghanistan Independent Human Rights Commission, during 2016 UNAMA/OHCHR conducted 11 capacity-building workshops across the country that were attended by 203 civil society representatives (both men and women) on how to engage effectively with international human rights mechanisms. During the workshops, civil society actors raised concerns about the diverse challenges to their work, including: the lack of recognition and respect from local authorities; political interference; decreased funding; threats, intimidation and other forms of abuse by anti-government elements, warlords and, on occasion, local authorities; and the lack of adequate protection and redress for such abuses. Moreover, the armed conflict further impeded civil society access to areas outside major administrative centres and restricted freedom of movement and freedom of assembly.

61. In addition to those challenges, which disproportionately affected women, women's rights activists reported that they were often stigmatized and harassed by members of their communities, including their own families, for promoting or defending women's rights. The space for women's participation, already limited owing to the traditional norms of a male-dominated society, has been further restricted by the many obstacles to civil society activism.

62. UNAMA/OHCHR continued to support the Afghanistan Independent Human Rights Commission. A key challenge faced by the Commission in 2016 was staff retention, as a significant number of qualified staff members left to join government offices or seek better-paid opportunities. In an effort to enhance the capacity of the Commission, UNAMA/OHCHR invited three Commission staff members to participate in a training workshop organized together with the International Institute for Criminal Investigations. The workshop, which was held in Doha from 21 to 25 August, was aimed at developing the investigation and documentation skills of Afghan human rights monitors dealing with violations of international human rights law, international humanitarian law and international crimes.

IX. Safety of journalists and media workers

63. During 2016, parties to the conflict displayed a lack of respect for the rights to freedom of expression and to receive and impart information. UNAMA/OHCHR noted with concern that armed conflict, coupled with direct threats and attacks on media workers and the lack of State protection, not only deterred journalists from exercising fully their right to seek and disseminate information, but also allegedly often led journalists to censor themselves in order to avoid reprisals or to relocate to seek safety or protection.

64. In 2016, State actors were alleged to have subjected journalists to beatings, arbitrary detentions and harassment and obstructed their access to information and reporting. In particular, UNAMA/OHCHR received allegations of ill-treatment against journalists attempting to report on security incidents by Afghan security forces, including the National Directorate of Security. UNAMA/OHCHR are not aware of investigations into such incidents.

65. Anti-government armed groups subjected journalists to intimidation, deliberate attacks and killings. In 2016, 12 journalists (9 men and 3 women) were killed. Of that total, seven were killed by the Taliban because of their association with the media (see para. 66 below), three were unintentionally killed in attacks during assignments in conflict areas and two were killed in allegedly criminally motivated incidents.

66. The Taliban continued its campaign of threats and intimidation against media outlets, labelling specific outlets as "military targets". Following their threat against Tolo TV in 2015, on 20 January 2016 a suicide attack with a vehicle-borne improvised explosive device against a shuttle bus operated by the Moby Group (the parent company of Tolo TV) killed 8 civilians, including 7 Tolo TV staff members, and injured 30 others. The Taliban claimed responsibility for the attack, stating that it was in retaliation for Tolo TV's alleged severe hostility to Islam, for serving as an apparatus and propaganda mechanism of the United States of America, for disrespecting Kunduz citizens and for making false accusations of executions, plunders, kidnappings and other abuses.

67. International human rights law and international humanitarian law provide effective normative protection to journalists and other media professionals in their exercise of the right to freedom of expression and from threats and attacks.[*] In particular, attacks deliberately directed at journalists are prohibited under international humanitarian law, as they are not participants in the hostilities they cover and do not lose their status as civilians. As such, the deliberate attack on the Moby Group shuttle bus is likely to have constituted a war crime. UNAMA/OHCHR noted with concern several threatening statements made by the Taliban against independent media outlets, which were often branded as "puppets controlled by the invaders". UNAMA/OHCHR also documented threats and intimidation perpetrated by anti-government elements, such as Da'esh, against radio stations in Jalalabad, Nangarhar Province.

68. Many Afghan human rights defenders have reported that the attacks by anti-government elements, the threats against journalists and human rights defenders and the increasing insecurity all affected their ability to advocate for human rights and created a climate of fear, and that the Government provided inadequate support to ensure their safety. Expanded Taliban armed activities in Farah, Helmand and Kunduz provinces have led to scores of journalists and civil society actors fleeing those provinces for fear of reprisals.

69. UNAMA/OHCHR therefore welcomes the renewed commitment of the Government to addressing violence against journalists. On 31 January 2016, the President issued a decree affirming the commitment of Afghanistan to freedom of expression in the media. Yet, the decree contains language indicating that the Government might seek to control or limit journalistic freedom of expression on national security grounds. In line with the decree, on 8 March a commission was set up to investigate cases of murder and violence against journalists and media workers since 2001. The commission received information related to 679 cases, of which 252 have been dismissed either because of the amount of time that has passed since the incident or because of the inability to access a specific area owing to insecurity.

[*] See A/HRC/24/23.

70. Furthermore, during the Afghanistan-European Union human rights dialogue held in Kabul on 1 June 2016, the Government committed itself to instructing the Afghan National Defence and Security Forces to respect freedom of expression and protect human rights defenders. Subsequently, the Ministry of the Interior and the National Directorate of Security issued instructions to their personnel on respect for freedom of expression; the Ministry of Defence, however, has not yet done so. The Government also committed itself to establishing, by the end of 2016, a mechanism for sharing information among security ministries on threats against journalists and members of civil society. Although the Ministry of the Interior has not yet complied, such information-sharing on individual cases has occurred during the past year.

X. Cooperation with United Nations human rights mechanisms

71. From 11 to 20 November 2016, the Special Rapporteur on the human rights of internally displaced persons visited Afghanistan with the joint support of the Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High Commissioner for Refugees and OHCHR. At the end of his mission, the Special Rapporteur issued a statement urging national and international actors to demonstrate consistency in addressing the situation of the hundreds of thousands of people across the country who were either newly displaced by the conflict or were facing repeated or protracted displacement. He further called for enhanced support and funding for durable solutions to the plight of the internally displaced, improved access to a national identity card and full implementation of the 2014 national policy on internally displaced persons.

XI. Conclusion

72. **In 2016, civilians continued to suffer the gravest impact of the conflict. UNAMA/OHCHR documented the highest levels of civilian casualties since 2009 and continued to receive reports of violence against women, torture and ill-treatment. Of particular concern was the alarming spike in child casualties, which rose by a fifth over 2015.**

73. **Over the past year, the Government has faced considerable obstacles owing to the deterioration in the security situation and its need to address concurrent political and economic issues. Persistent institutional weaknesses in the administration of justice and the rule of law, combined with a pervasive culture of impunity for violations and abuses, continued to have an adverse impact on the human rights situation.**

74. **Ensuring respect for human rights can only become a reality once perpetrators are held accountable for human rights violations. Effective accountability for violations and abuses offers the only path to ending the cycle of violence and impunity and moving towards national reconciliation and a sustainable peace.**

75. **Another essential component of a durable solution lies in the active and inclusive participation of all Afghans, in particular women. As the Government publically recognized in 2016, the role of women in building a lasting peace is indispensable. UNAMA/OHCHR will therefore intensify its efforts to work with the Government, civil society, the international community and other stakeholders in building a culture of respect for human rights and the protection of civilians.**

XII. Recommendations

76. **The United Nations High Commissioner for Human Rights recommends that the actions set out below be taken in response to the foregoing.**

77. **To the Government of Afghanistan:**

(a) **Create a climate conducive to respect for human rights through the expansion and implementation of the legal framework and the strengthening of institutions in consonance with the reiterated commitment of the nation's leaders to guaranteeing human rights;**

(b) **Implement the national policy on civilian casualty mitigation and finalize the related action plan, which should include concrete objectives and measures to prevent casualties in the conduct of hostilities, and foresee the establishment of a dedicated and specialized entity within the Government to investigate all incidents of conflict-related harm to civilians, including conflict-related sexual violence;**

(c) **Build and expand the capacity of the Afghan National Defence and Security Forces to adequately monitor, identify and prevent cases of underage recruitment by establishing child protection units in provinces where they are not yet in place, and address the lack of services and alternatives for children who have been rejected for recruitment by the Afghan National Defence and Security Forces owing to their young age or who have been released from active service;**

(d) **Ensure due process and full protection of the rights of children detained on allegations of national security-related charges by developing and enforcing operating procedures and regulations, in line with national and international juvenile justice standards, and by reviewing the cases of children who have been detained without trial for prolonged periods of time;**

(e) **Ensure that appropriate, child-specific provisions and adequate resources are included in the Afghan Peace and Reconciliation Process;**

(f) **Ensure that victims of violations have an effective remedy and strengthen procedures to ensure gender-sensitive and inclusive reparations, including compensation to families of civilians killed and injured in conflict-related violence, by raising public awareness of procedures to obtain reparations, with particular attention to equal and effective access for women and girls;**

(g) **Increase efforts to prevent, punish and eradicate all forms of violence against women through the adoption and implementation of legal and policy frameworks compliant with international human rights standards, strengthen the capacity of the criminal justice system to ensure accountability and conduct countrywide campaigns to raise women's awareness of the remedies available in cases of violence;**

(h) **Ensure the swift implementation of the national plan on Security Council resolution 1325 (2000) by providing dedicated human and financial resources and accountability mechanisms to track and report on its effective application in an effort to ensure women's meaningful participation in all peace and reconciliation processes;**

(i) **Engage civil society meaningfully in all stages of the implementation of the Afghanistan Peace and Reconciliation Strategy and protect the space for civil society actors, in particular women and girls, working on peace and reconciliation processes and transitional justice initiatives;**

(j) Implement a robust vetting process to prevent members of armed groups involved in serious crimes, such as violations of international humanitarian law and international human rights law, from being recruited by security or government institutions as part of any peace settlements, while ensuring that no blanket amnesties are granted and the rights of victims are respected;

(k) Ensure that impunity for violations committed against journalists and members of civil society is addressed, that all violations are investigated promptly and thoroughly and that perpetrators are brought to justice, so that journalists and civil society actors may enjoy their legitimate rights to freedom of expression and access to information, without fear of reprisals or attacks;

(l) Establish a de jure moratorium on the death penalty and respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular article 6 of International Covenant on Civil and Political Rights and the minimum standards set out in the annex to Economic and Social Council resolution 1984/50, improve the ability of the judiciary to guarantee fair trials and due process in all criminal proceedings pursuant to article 14 of the Covenant and consider the experiences of other countries that have faced mass atrocities and violence and that have moved towards the abolition of the death penalty while seeking justice for victims.

78. **To anti-government elements:**

(a) Cease the deliberate targeting of civilians, in particular civilian government officials, journalists, tribal elders, religious leaders, human rights defenders, judges and prosecutors, and civilian locations, in addition to places of worship and culture, in recognition of their civilian nature guaranteed under international humanitarian law;

(b) Issue statements recognizing the important role of civil society actors, notably human rights defenders and journalists, including women and girls, as well as their right to freedom of expression and critical opinion, and denouncing attacks against the media and civil society, acknowledging and respecting their civilian status;

(c) Cease the use of improvised explosive devices, particularly in indiscriminate and disproportionate complex and suicide attacks, in all areas frequented by civilians, as well as the use of illegal pressure-plate improvised explosive devices;

(d) Uphold statements by national leaders regarding the human rights of women and girls in areas under Taliban influence, especially by ceasing attacks and threats against girls' education, teachers and the education sector in general;

(e) Cease firing explosive weapons, particularly mortars, rockets and grenades, from and into civilian-populated areas.

79. **To all parties to the conflict:**

(a) Refrain from targeting civilian objects, including schools and hospitals, and take the measures necessary to cease indiscriminate attacks against civilian objects;

(b) Facilitate humanitarian access to all people and ensure that human rights actors are able to monitor and report on attacks affecting civilians and civilian objects, in accordance with international humanitarian law and international human rights law;

(c) Ensure accountability for the perpetrators of attacks against civilians and civilian objects where such attacks amount to violations of international humanitarian law or international human rights law;

(d) Provide an environment conducive for civil society, human rights defenders, journalists and media workers, in particular women and girls, to operate freely, including to promote human rights and the rule of law, without fear of intimidation, harassment, arrest, detention or any other human rights violation;

(e) Guarantee protection to journalists, civil society actors and human rights defenders, as civilians under international humanitarian law, and respect their rights to monitor and report freely on the armed conflict, without fear of attack or reprisal for their work.

80. **To the international community:**

(a) Support the Afghan security forces in their efforts to prevent civilian casualties and protect civilians from the harms of conflict-related violence;

(b) Support government efforts to advance the women, peace and security agenda, including through the implementation of the national plan on Security Council resolution 1325 (2000), through technical and support and targeted advocacy;

(c) Advocate with parties to the conflict for women's effective and meaningful participation in informal and formal peace negotiations and protection of their rights through future peace agreements;

(d) Promote a just and inclusive peace process by supporting civil society actors in their transitional justice efforts and their active participation in peace and reconciliation processes;

(e) Ensure that the rights of victims and their families and of witnesses are respected and protected in peace and reconciliation processes and settlements;

(f) Assist the Government of Afghanistan, through resource mobilization, to implement fully its commitments under the action plan on children in armed conflict.

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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya

Summary

The present report, submitted pursuant to resolution 31/27 of the Human Rights Council, was prepared in cooperation with the United Nations Support Mission in Libya. It describes the situation of human rights in Libya and sets out the support provided to key Libyan institutions with regard to the protection of civilians, groups in focus, administration of justice, the rule of law and transitional justice. It concludes with recommendations addressed to all parties to the conflict, the Government, the international community and the Human Rights Council.

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I. Introduction

1. On 27 March 2015, the Human Rights Council adopted its resolution 28/30, in which it requested the United Nations High Commissioner for Human Rights to dispatch a mission to investigate violations and abuses of international human rights law committed in Libya since the beginning of 2014. The report on the investigation was issued on 15 February 2016 (A/HRC/31/47).

2. The Council subsequently adopted its resolution 31/27, in which it requested the High Commissioner to present a written report to the Council, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, and an assessment of further technical support or assistance needed to implement the resolution and the recommendations contained in the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the investigation by the Office on Libya to address the situation of human rights in Libya.

3. The present report was prepared in cooperation with the United Nations Support Mission in Libya (UNSMIL). OHCHR continues to provide support to the human rights mandate of UNSMIL. The Director of the UNSMIL Human Rights, Transitional Justice and Rule of Law Division represents the High Commissioner in Libya.

II. Context

4. Following the deterioration in the security and political situation in 2014, the Libyan Political Agreement was signed and a Presidency Council headed by Prime Minister Serraj was established on 17 December 2015. Under the Agreement, the Presidency Council was tasked with forming a Government of National Accord, to be endorsed by the House of Representatives elected in 2014. In its resolution 2259 (2015), the Security Council endorsed the Agreement and the Government of National Accord as the internationally recognized Government of Libya and called for official contact with parallel institutions outside the framework of the Agreement to be ended. Various actors in Libya, including powerful armed groups, opposed the Agreement and by the end of 2016 the House of Representatives had not endorsed the Government of National Accord proposed by the Presidency Council. In March 2016, the Presidency Council moved to Tripoli and, in response to the continuing legislative vacuum, delegated ministerial responsibilities to a caretaker Government headed by Prime Minister Serraj. However, the Presidency Council remained unable to take full control of governmental functions or implement many of the provisions of the Agreement, including its security, human rights, transitional justice and rule of law provisions. Armed groups across the country remained the most powerful actors on the ground, contributing to insecurity and abuses of human rights. The economic situation and the provision of public services deteriorated, with frequent power cuts and cash shortages, while common crimes and acts of political violence appeared to increase.

5. The elected Constitution Drafting Assembly finalized a draft constitution in April 2016. An ongoing dispute over whether the Assembly adopted the draft with a sufficient number of votes has hindered progress towards its approval by way of a national referendum.

6. Throughout 2016, Operation Dignity forces (consisting of Libyan National Army forces and other armed groups led by General Khalifa Haftar) continued to fight against the Benghazi Revolutionaries Shura Council and groups pledging allegiance to the Islamic State in Iraq and the Levant (ISIL) in Benghazi, reducing the territory controlled by the

Shura Council. Operation Dignity forces also encircled Derna, controlling entry and exit from the city.

7. In May 2016, forces loyal to the Presidency Council, supported by airstrikes conducted by the United States of America, began operations targeting groups pledging allegiance to ISIL in Sirte. It is estimated that more than 650 fighters from the forces loyal to the Presidency Council were killed; ISIL casualties are unknown. By December, the loyalist forces had gained control over Sirte.

8. In September, the Libyan National Army seized control of the eastern oil crescent, including Ras Lanuf, Al-Sidra and Zueitina, from the Petroleum Facilities Guards armed group. Libyan National Army forces also increased their presence in southern Libya. Those developments raised concerns of a possible outbreak of conflict between armed groups loyal to General Haftar in the east and Misratan armed groups in the west who support the Presidency Council.

9. In mid-October, the former "Government of National Salvation", which had controlled Tripoli prior to the entry of the Presidency Council in March, with the support of armed groups, took control of the Rixos hotel complex building in Tripoli, expelling the High State Council, a consultative body provided for by the Political Agreement, from its headquarters.

10. Hundreds of armed groups continue to operate throughout Libya, many nominally affiliated with the Ministries of Defence, Interior and Justice. They receive salaries from central State funds, but are not under the command and control of the State. They exercise effective control in localized areas, including over detention centres where thousands of people are detained. Action to remove law enforcement powers from armed groups, as foreseen in the Libyan Political Agreement, and demobilization, disarmament and reintegration have not yet begun.

11. OHCHR, through the UNSMIL Human Rights, Transitional Justice and Rule of Law Division, continues to monitor and report on the human rights situation in Libya. UNSMIL/OHCHR engages in regular dialogue with the authorities, armed groups, civil society and other relevant actors in Libya. The impact and effectiveness of technical assistance is limited by restricted access to Libya and the prevailing impunity, creating an environment of intimidation and fear, inhibiting interlocutors, including officials, civil society and victims, from sharing information and engaging on human rights. The lack of formal government counterparts, including a Minister of Justice, further limits cooperation.

12. Libya is State party to 11 core human rights treaties, including the International Covenant on Civil and Political Rights and its first Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families; and the Convention on the Rights of the Child and its Optional Protocols. It is also a party to the African Charter on Human and Peoples' Rights.

13. Libya is obliged to respect, protect, promote and fulfil the human rights of all persons within its territory and subject to its jurisdiction, without discrimination. That includes the obligation to ensure a prompt, adequate and effective remedy to those whose rights have been violated, including the provision of reparations and guarantees of non-recurrence, and to investigate and bring to justice perpetrators of gross violations.

14. International humanitarian law also applies to the non-international armed conflict which is continuing in Libya. Libya is a party to the four Geneva Conventions of 1949 and

Additional Protocols I and II. Of particular relevance are common article 3 to the Geneva Conventions and Additional Protocol II, which both apply to non-international armed conflicts and contain protections applicable to civilians and other persons not taking a direct part in hostilities, as well as applicable norms of customary international humanitarian law.

III. Protection of civilians

A. Indiscriminate attacks and other violations of international humanitarian law

15. Under international humanitarian law, civilians and civilian objects are protected from being the object of an attack. Parties to a conflict are under an obligation to target only military objectives. Direct attacks on civilians and indiscriminate attacks, which do not distinguish between civilians and fighters, are prohibited. Attacks that are expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects excessive to an anticipated concrete and direct military advantage are also prohibited. Attacks in breach of those standards amount to war crimes that can be prosecuted by the International Criminal Court, which has jurisdiction over crimes committed in Libya since 2011. Under the Libyan Political Agreement, all armed factions are committed to complying with Libyan legislation and international humanitarian and human rights law.

16. In the current context in Libya, it is often difficult to establish whether any particular attack was indiscriminate and which party was responsible. However, the available information indicates a pattern of attacks using imprecise weapons in heavily populated or residential areas, which together may amount to indiscriminate attacks. Weapons that are imprecise or that have wide-area effects, may be unsuited for targeting military objectives located in densely populated areas. Mines, booby-traps and explosive remnants of war are also indiscriminate by nature.

17. In 2016, attacks in populated areas with imprecise weapons continued to cause civilian casualties across Libya, including in Benghazi, Derna, Sirte, Sokna and Tripoli. From 1 January to 31 October, UNSMIL/OHCHR documented 498 civilian casualties, including 212 killed and 286 injured. Victims included 121 men killed and 151 injured, 31 women killed and 28 injured, 43 children killed and 51 injured, and 73 other victims whose sex and/or age is unknown. The leading causes of death were airstrikes, gunfire and shelling. The largest number of civilian deaths documented were in Benghazi.

18. Incidents documented included attacks on children in recreational areas, on camps for internally displaced persons and on peaceful protesters. On 15 June, the Libyan National Army/Libyan Air Force carried out an airstrike, which hit a children's playground in Derna, injuring three children. On 20 September, unidentified aircraft carried out an airstrike that hit a water park near Sokna in Jufra, killing six women and a child and injuring three others. On 14 October, the Benghazi Revolutionaries Shura Council shelled a playground in the Benina neighbourhood, injuring five boys. On 9 January, unidentified groups shelled the Al-Fallah camp for internally displaced persons from Tawergha, killing two women and one man, and injuring eight others, including one child. On 16 October, shelling of the same camp led to the death of one woman and the injury of three women and three children. On 6 May, a peaceful protest in Al-Kish square, Benghazi, was shelled, killing 4 men, 2 women, 1 child and 1 unidentified person, and injuring at least 32 others. This attack followed two similar incidents in 2015, where peaceful protesters were shelled, killing at least 12 civilians, including 3 children.

19. Civilian objects, in particular hospitals, were also attacked. From 1 January to 28 October, UNSMIL/OHCHR documented seven attacks on medical facilities, including the

bombing of a hospital in Derna in February in which 2 people were killed; the shelling of the Benghazi Medical Centre in May and June; and a car bomb attack on the Al-Jala' hospital in Benghazi on 24 June, in which 5 people were killed and 13 injured, including 2 children. Other attacks on hospitals were recorded in Zawiya and Sabha.

20. Since the outbreak of the conflict between the Benghazi Defence Brigade armed group and Operation Dignity forces in June 2016, a number of mass graves have been discovered in Ajdabiya. In July, 17 bodies were discovered in the Ajli Daya neighbourhood; a mass grave with 29 bodies was discovered in the Al-Magron area; and 10 bodies were reportedly found in the Al-Karasa neighbourhood.

21. Civilians remain trapped in the Ganfouda neighbourhood of Benghazi, facing bombing and shortages of food, water and medical care. UNSMIL/OHCHR documented the deaths of 32 civilians in Ganfouda in August and October from airstrikes. Those trapped include migrant workers and former prisoners from the Buhdeima military prison in Benghazi, who were taken by the Benghazi Revolutionaries Shura Council in 2014, and reportedly other individuals earlier abducted by the Shura Council. Despite mediation efforts supported by UNSMIL, by late October the Shura Council and the Libyan National Army had not reached an agreement on the modalities for evacuation of civilians.

B. Violations of the right to life, including unlawful killings

22. International human rights law prohibits the arbitrary deprivation of life and requires the State to protect the right to life.[1] The State is responsible for violations committed by non-State actors operating in support of or as agents of State authorities. Governments shall ensure strict control, including a clear chain of command, over all officials responsible for apprehension and detention.[2] Under international humanitarian law it is unlawful to kill civilians and any persons not taking an active part in hostilities. It is prohibited to kill members of armed forces who surrender, or are otherwise hors de combat (e.g. captured or wounded fighters no longer able to fight).[3]

23. UNSMIL/OHCHR has found that armed groups, including some operating nominally under State institutions, were responsible for the killing of civilians and detainees in violation of the right to life and of international humanitarian law.

24. In 2016, UNSMIL/OHCHR received reports of unlawful killings carried out by armed groups from all sides. On 9 June, the bodies of 12 men associated with the former Qadhafi regime were found with gunshot wounds in different locations in Tripoli. All 12 were prisoners from the Al-Ruwaimi prison in Tripoli, whose release had just been ordered by the Office of the General Prosecutor. The Al-Ruwaimi prison is controlled by an armed group, the Ruwaimi Brigade, under the nominal oversight of the Judicial Police. The circumstances surrounding the killings remain unclear, including whether the prisoners had been released before their deaths. The Office of the General Prosecutor stated that it had opened an investigation, but has yet to announce its findings.

25. On 21 July, the bodies of 14 people were found in a rubbish dump in the Al-Leithi neighbourhood of Benghazi and on 29 October, 10 bodies were found in another rubbish dump in the Al-Sheibna neighbourhood. Both neighbourhoods are controlled by forces aligned to Operation Dignity. Reports indicate that the bodies had their limbs bound,

[1] See, for example, the International Covenant on Civil and Political Rights, art. 6 (1).

[2] See the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 2.

[3] See common article 3 and Additional Protocol II, art. 4 (2) (a) to the Geneva Conventions.

showed signs of torture and had been shot, many in the head. Unidentified armed groups, apparently aligned to Operation Dignity, had reportedly abducted at least five of the victims. The office of the Ministry of Interior in Benghazi reportedly opened an investigation into the July killings, but has not made public any findings.

26. UNSMIL/OHCHR has received information on abductions and killings of adults and children by armed groups or gangs of common criminals. For example, in western Libya on 24 February, the body of an 11-year-old boy with marks of torture and a wire around his neck was found in the Sayad area of Tripoli. His abductors had taken him 68 days earlier while he was on his way to school and demanded a ransom from his family. On 30 June, the Central Security Forces/Abu Salim group in Tripoli reportedly abducted a young man. His body was found in the street on 16 July, showing signs of severe beating and bruising. On 4 November, a 4-year-old girl was found dead in the Al-Ma'mura neighbourhood in Warshafana. An armed group had abducted her 15 days earlier. Her body was found in an abandoned farm with injuries to her head and neck, following the lack of a ransom payment.

27. In eastern Libya, armed groups aligned to Operation Dignity took a man from his home in Benghazi on 6 April. His body was found on 26 May with signs of torture, including a broken hand, and gunshot wounds. In a similar case, a man was detained in February 2016 and held for two months in a detention centre run by an armed group aligned to Operation Dignity in Tukra. He was released, but subsequently abducted from the street in Ajdabiya on 29 April. His body was found on 30 April with signs of torture, including cigarette burns, and gunshot wounds.

28. In southern Libya, on 25 July, unidentified gunmen abducted two officials from the civil registry office in Murzuq. On 27 July, their bodies were found in the street in Sabha.

29. Assassinations were also reported. On 10 May, unknown gunmen killed a media activist in Sabha in a drive-by shooting. On 16 March, a human rights defender was assassinated in a car bomb attack in downtown Derna.

30. UNSMIL/OHCHR has also documented executions of prisoners. In January, groups pledging allegiance to ISIL reportedly beheaded six prisoners; three from the Petroleum Facilities Guards group and three local officials in Sirte. The groups also executed a policeman in January, whom they had captured three months earlier, and hung his body on a pole in Harawa for 72 hours. They also executed five male prisoners in Sirte in March and three male nurses in July, who had provided medical support to the Libyan National Army.

31. On 20 March, the Derna Mujahedin Shura Council carried out eight executions of alleged members of ISIL. Armed groups from Warshafana abducted and then executed six men in March. In June, the Central Security Force group reportedly publicly executed two men accused of unknown crimes in Ganer Benghahir.

32. UNSMIL/OHCHR received information that in early June, Al-Bunyan al-Marsous forces executed a man who was suspected of being a member of ISIL in Sirte, shortly after he surrendered himself. On 21 September, video footage circulating on social media appeared to show ill-treatment by Al-Bunyan al-Marsous forces of a man accused of being a member of ISIL. This was followed by allegations that he was then executed.

33. UNSMIL/OHCHR has regularly supported victims and their families, providing advice and intervening with government officials and armed groups at all levels through meetings, letters and public statements. UNSMIL has issued a regular monthly report on civilian casualties in Libya. It has also supported civil society to work on protection cases, through direct cooperation and capacity-building and carried out regular briefings with the international community. It has also supported a local mediation effort with both the Libyan National Army and the Benghazi Revolutionaries Shura Council to seek a ceasefire and

agreement for the evacuation of all civilians, as well as wounded combatants, from Garnfouda, Benghazi.

34. UNSMIL/OHCHR refers individual cases of concern, where possible, to the appropriate organizations. It regularly receives requests for medical care for civilian victims of indiscriminate attacks and victims of human rights violations and abuses, and seeks accessible programmes that could provide the nature and level of support needed.

IV. Groups in focus

A. Women

35. While Libya has ratified the Convention on the Elimination of All Forms of Discrimination against Women and other international instruments that prohibit discrimination on the basis of sex, significant discrimination against women in both law and practice continues to have a serious impact on the rights of women in Libya. Following intimidation and attacks in 2014 and 2015, several women activists were forced to leave the country or adopt a low profile. In 2016, UNSMIL/OHCHR received continuing reports of women activists in exile receiving threats. On 25 September, an armed group that operates in Al-Fernaj, Tripoli, abducted and tortured a blogger, accusing him of being "liberal" and writing in support of women's rights on the Internet. Relatives are now unable to locate him.

36. Women in detention and migrant women are particularly vulnerable to sexual abuse and other forms of violence. Women held in detention centres run by armed groups across the country are commonly guarded by men, who have full access to their cells. According to credible information received by UNSMIL/OHCHR, migrant women who travel through Libya using smuggling routes and those who are in official and unofficial migrant detention centres are targeted for rape. Migrant women who had been detained described how they were taken away by armed men from cells shared with others and repeatedly raped over a number of days.

37. Women migrants held by groups pledging allegiance to ISIL were "handed over" to individual fighters and repeatedly raped. If they sought to resist they were beaten and tied up. Those that tried to escape were also beaten and denied food and/or water for up to two days.

38. Libyan women face discrimination in matters such as travel restrictions, as a result of armed groups requiring them to travel with a male guardian in some areas, and do not have the right to pass on their nationality to their children or spouse. Civil society groups have lobbied for the draft constitution to address these issues. On 8 September, the Presidency Council established a women's support and empowerment unit, pursuant to the Political Agreement.

B. Children

39. Libya has ratified the Convention on the Rights of the Child and its optional protocols. The Convention requires States to protect and ensure the care of children affected by armed conflict. As described in section III above, children have been killed during hostilities by heavy weapons used in residential areas, crossfire, explosive remnants of war and mines.

40. UNSMIL/OHCHR continued to receive reports of the abduction of children in 2016. Four children from the Shershari family, who were abducted on 2 December 2015 by

unknown assailants in Surman, remain missing. Other children have been abducted and killed, as outlined in section III above.

41. The ongoing violence has led to the destruction and damage of schools, the displacement of schoolchildren, and a lack of school books. According to the Ministry of Education, 558 out of 4,200 schools in Libya are not functioning, affecting 279,000 school-aged children.

42. Child health has also been affected, with the conflict leading to a breakdown in the provision of medical services. On 5 May, it was reported that 12 infants had died from preventable bacterial infection in the Sabha Medical Centre neonatal intensive care unit, while 1 child died and 3 others were admitted to the intensive care unit in the Tripoli Medical Centre after being given expired medication.

C. Migrants[a]

43. While Libya is a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, its legislation and practice are not in line with international and regional standards for migrants, including refugees and asylum seekers. Libya criminalizes irregular migration and has no asylum determination system.

44. UNSMIL/OHCHR has found that migrants in Libya face a host of violations and abuses, both in and outside detention.[b] Perpetrators include State officials, armed groups and individuals. The State has not been able to ensure effective protection for migrants in Libya.

45. Migrants in Libya are highly vulnerable, facing arbitrary detention in inhuman conditions; torture, including sexual violence; abduction for ransom; extortion; forced labour; and killings. Those held in official detention centres run by the Department for Combating Illegal Migration under the Ministry of the Interior are held arbitrarily, with no judicial process, in violation of Libyan law and international human rights standards. Armed groups, smugglers and traffickers hold others in unofficial places of detention. Sub-Saharan Africans are especially vulnerable to abuse as a result of racial discrimination. Migrant women are also at particular risk of rape and other forms of sexual violence.

46. UNSMIL/OHCHR has documented inhuman conditions in detention centres managed by the Department for Combating Illegal Migration. Detainees are often held in warehouses with appalling sanitary conditions, little space to lie down and extremely limited access to light, ventilation or washing facilities. It has received reports of guards denying access to toilets, forcing migrants to urinate and defecate within the overcrowded warehouses in which they are kept. In some centres, migrants suffer from severe malnutrition, receiving on average around one third of the minimum daily intake of calories required by adult men, leading to or contributing to deaths. It has also received numerous and consistent reports of torture, including beatings and sexual violence, and the forced labour of detainees.

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[a] OHCHR defines an "international migrant" as "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence". See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2014, p. 4.

[b] See UNSMIL/OHCHR, "'Detained and disbarmoured' Report on human rights abuses against migrants in Libya", 13 December 2016.

47. On 1 April, 4 migrants were killed in Al-Nasr detention facility in Al-Zawiya and approximately 20 injured following an apparent escape attempt. One guard was injured. Médecins sans Frontières said that on 17 August unidentified armed men attacked its boat that rescues migrants in international waters, shooting at the bridge and boarding the boat. The Libyan Coast Guard acknowledged encountering the boat, but claimed that they only shot in the air and denied boarding it. On 21 October, a man from a speedboat with "Libyan Coast Guard" written on it reportedly attacked a rubber boat carrying 150 migrants, 14 nautical miles out to sea, causing it to collapse and the migrants to fall into the sea. After the attack, a non-governmental organization, Sea-Watch, was able to rescue 120 persons and recovered 4 bodies. A further 26 persons are presumed dead. Reportedly, Libyan naval forces in Tripoli denied the attack, but admitted an encounter with Sea-Watch on the same day, claiming that it was in Libyan waters.

D. Media professionals, activists and human rights defenders

48. Media professionals, activists and human rights defenders do not enjoy freedom of expression in Libya. They face a range of abuses, including abductions and murder, or summary executions. Armed groups are the main perpetrators. The State has been unable to provide effective protection.

49. Media professionals, activists and human rights defenders continued to be targeted for speaking out on human rights issues or criticizing armed groups. On 28 March, armed groups aligned to Operation Dignity detained two bloggers and held them in the Grenada detention facility in Benghazi. The bloggers were denied access to a lawyer and family visits. They were released after four months. On 30 March, a blogger and journalist was taken by armed groups in Tripoli and questioned regarding his social media posts. While detained, he said that he was beaten with a stick and attacked by a dog. He was released on 3 April.

50. On 3 April, armed groups supportive of the Government of National Accord used heavy weapons to attack the building in Tripoli of the Al-Naba television channel, which was aligned to the General National Congress, in an apparent attempt to stop it broadcasting. The building was badly damaged. Armed groups subsequently entered the building and intimidated the staff.

51. Journalists and media professionals who work in conflict zones also face danger. On 2 July and 2 October respectively, snipers from groups pledging allegiance to ISIL in Sirte killed Abdelkader Fassouk, a Libyan journalist, and Jeroen Oerlemans, a Dutch journalist. On 23 June, a sniper in the Al-Qawarsha neighbourhood in Benghazi, allegedly linked to the Benghazi Revolutionaries Shura Council, killed Libyan journalist Khaled Showiref Al-Zentani.

52. Human rights defenders also faced danger in their work. On 16 March, Abdul Basit Abu-Dahab, was killed in a car bomb attack in downtown Derna. He had advocated for many years for the rule of law and human rights in Libya. He had received numerous death threats for his work and survived two previous assassination attempts in 2013 and 2014.

53. While article 26 (6) of the Libyan Political Agreement commits parties to support the proper functioning of the National Council for Civil Liberties and Human Rights, the country's national human rights institution has remained largely non-operational. In 2014 and 2015, its staff and board members were subjected to threats and forced to close their offices in Tripoli. Some fled the country. The term of the Council elapsed in late 2014 and has not been renewed by the House of Representatives, as is required by law. The former legislature, the General National Congress appointed a parallel institution in March 2015.

Support

54. UNSMIL/OHCHR has worked to directly support victims by intervening with the Government and other counterparts on individual cases and issues of concern and regularly briefing the international community. It has also analysed by-laws issued by the Civil Society Commission, the authority that oversees the operation of international non-governmental organizations, and briefed Libyan officials and the international community on the lack of compliance of the by-laws with international human rights standards.

55. UNSMIL/OHCHR has regularly issued public statements on groups in focus, including on the assassination of Abdul Basit Abu-Dahab in March; the killings of four migrants from the Al-Nasr detention facility in April; and the establishment of a women's support and empowerment unit by the Presidency Council in September. On World Press Freedom Day, UNSMIL issued a video and statement in support of journalists in Libya. It has organized or supported workshops for civil society, jointly with the Cairo Institute for Human Rights Studies, the Heinrich Böll Foundation, Tunisian and Libyan organizations and United Nations partners. It also supported a workshop for the Department for Combating Illegal Migration on international standards that relate to migration and asylum.

56. It has been observed that essential support is usually lacking for the protection of media professionals, activists and human rights defenders, including financial support for persons at risk to leave and remain outside Libya until it is safe to return. Ongoing capacity-building for human rights defenders, particularly for women defenders, also remains a relevant need.

V. Administration of justice

A. Overview

57. International human rights law obliges States to ensure that any person whose rights are violated has access to an available, prompt and effective remedy. That is usually achieved through an appropriate legal framework and a functioning justice system. In Libya, the existing legal framework needs to be reviewed, to bring it into line with international human rights standards. However, in the current unstable environment, serious efforts at law reform are not possible. The justice system has faced ongoing attacks that have severely limited its functioning. From June 2012 to July 2016, UNSMIL/OHCHR documented 37 cases of attacks on judges and prosecutors. Political pressures at the local and regional level also impact the impartiality of the judiciary.

58. The inability of the justice system to function effectively has led to widespread impunity, particularly for abuses by armed groups. Despite the daily abuses, UNSMIL/OHCHR is unaware of any prosecution of armed group members or State officials for crimes related to abuses committed since 2011. On a positive note, despite the political divide and the fragmentation of State institutions, key bodies such as the Supreme Court, the High Judicial Council, the Prosecutor General and the Judicial Police (the prison service) remain united.

B. The constitution

59. The elected Constitution Drafting Assembly met in March and April to finalize the draft constitution. On 23 March, the High Commissioner wrote to the members of the Assembly to urge them to strengthen the human rights provisions in the draft, in line with international standards. He emphasized the need to prohibit discrimination, including

against women; ensure the protection of refugees against refoulement; and include references to the prohibition on torture; fair trial guarantees; abolition of or restrictions on the use of the death penalty; and guarantees of freedom of religion, belief, opinion and expression. While not in full compliance with international human rights standards, the April draft included some improvements in the areas of discrimination against women, the prohibition on torture, freedom of association and freedom from servitude, slavery and human trafficking.

60. A dispute over whether the Assembly adopted the draft with a sufficient number of votes is impeding next steps towards approval in a national referendum. UNSMIL continues to reach out to those who are boycotting the Assembly to facilitate agreement on a draft constitution.

C. Libyan Political Agreement

61. There has been little progress in implementing the administration of justice and rule of law provisions of the Libyan Political Agreement. Implementation would address many concerns regarding impunity and abuses committed by armed groups. The Agreement requires that armed groups release or hand over to the judicial authorities persons held in custody without a legal basis; that judicial authorities bring those persons before the judiciary or release them; and that the competent judicial authorities provide effective protection. The Agreement also provides for the judicial authorities to be given exclusive power to hold detainees and prisoners and for the authority to arrest and detain to be strictly limited to statutory law enforcement bodies.[6] The Presidency Council is yet to make progress on implementation of these provisions. On a related issue, on 9 May the Presidency Council issued a decision to establish a presidential guard, a military and police force with the task of securing the Presidency Council and public facilities. It appointed a commander for the presidential guard in August.

D. Arbitrary detention, deprivation of liberty, torture and other ill-treatment

62. International human rights law prohibits arbitrary arrest or detention.[7] Detention is arbitrary if it is not in accordance with national law, or is otherwise inappropriate, unjust, unreasonable, or unnecessary in the circumstances.[8] A detained person has a range of due process rights, including the right to be brought before a judicial authority and to a trial within a reasonable period or release.[9] In April, the United Nations Working Group on Arbitrary Detention adopted two opinions, finding in one case that a 65-year-old woman

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[6] See articles 26 (2), (3) and (4) and 44.

[7] See the International Covenant on Civil and Political Rights, art. 9 (1) and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person. See also the procedural safeguards for persons in detention under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173.

[8] The circumstances in which the United Nations Working Group on Arbitrary Detention considers that deprivation of liberty is arbitrary is set out in OHCHR fact sheet No. 26, section IV B. The Human Rights Committee clarified that the meaning of the term "arbitrary" must be interpreted "broadly to include elements of inappropriateness, injustice and lack of predictability" in communication No. 305/1998, *Hugo van Alphen v. Netherlands*, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8.

[9] See the International Covenant on Civil and Political Rights, art. 9 (3). Article 9 outlines other due process rights that relate to arrest and detention.

and her son had been arbitrarily detained for almost a year and in a second case that 12 former Qadhafi officials had been arbitrarily detained, some for periods of more than four years.[10] International human rights law contains an absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment.[11]

63. UNSMIL/OHCHR has found that arbitrary detention, deprivation of liberty, torture and other ill-treatment are widespread in Libya.[12] Victims include those who are targeted for their identity or opinion, as well as migrants. Perpetrators are primarily armed groups, some of whom act on behalf of the State, and State officials.

64. The use of armed groups to carry out State law enforcement functions has compounded the problems of impunity. Since 2012, armed groups have been nominally integrated into various State structures, including the Ministries of Defence, the Interior and Justice, while in practice maintaining their own command and control structure. Under this arrangement, the State continues to pay their salaries, while the armed groups carry out law enforcement functions, such as arrests and running detention centres, with little or no official oversight or control.

65. It is estimated that there are between 6,000 and 8,000 detainees and prisoners in Ministry of Justice prisons.[13] Over 90 per cent are in pretrial detention, often detained for years with no prospect of going to trial. They include conflict-related detainees, a significant number of whom have been in detention since 2011. It is unknown how many detainees are held in detention centres run by the Ministry of Defence, the Ministry of the Interior and armed groups.

66. UNSMIL/OHCHR regularly receives information on arbitrary detentions and deprivation of liberty in Libya. Armed groups continue to detain individuals, often based on their political opinion, tribal or other affiliations, or simply to exchange them for other detainees. Typically, those held are detained with no judicial process and sometimes despite release orders by the public prosecution. Detainees are often subjected to torture or other ill-treatment and sometimes coerced into giving confessions. At times, confessions are publicly broadcast on television. Torture includes beating, shooting, cigarette burns, electrocution, suspending detainees upside down and enclosing them in small, suffocating spaces. Detainees can be held arbitrarily for years.

67. Owing to concerns for the safety of detainees and their relatives, UNSMIL/OHCHR is often unable to release publicly information regarding the cases that it documents. In 2016, it received consistently disturbing information regarding brutal patterns of torture, other ill-treatment and inhuman prison conditions in a number of prison facilities, including in Gernada and Kuweifiya prisons in Benghazi; the Al-Jawiya and Tomina prisons in Misrata; and the Abu Salim, Fursan Janzur, Al-Hadhba, Mitiga and Military Intelligence detention facilities and prisons in Tripoli. From May to July 2016, UNSMIL/OHCHR documented six deaths in custody as a result of torture or ill-treatment in detention centres in Tripoli and Misrata. It also received reports that a prison official in Al-Hadhba, was continuing to work in the prison, despite being shown on video footage to have been involved in torturing Al-Sa'di Qadhafi, a son of Muammar Qadhafi.

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[10] Working Group on Arbitrary Detention, opinions No. 3/2016 and No. 4/2016.

[11] See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, art. 7.

[12] In the present report, the term "detention" is intended to reflect deprivation of liberty by both State officials and armed groups, given that armed groups remain in control of many facilities and that many armed groups were nominally brought under the purview of government ministries after 2011.

[13] Information provided to UNSMIL at a meeting with officials from the Ministry of Justice on 16 November 2016.

68. UNSMIL/OHCHR visited Mitiga and Sabha detention centres in May and July 2016 and observed dire conditions. An armed group, the Special Deterrence Force, runs Mitiga detention centre. Its representatives said that the facility was holding approximately 1,700 people, of whom only 91 had been sentenced by a court. There were 200 women and 120 children being held. Detainees were held in severely overcrowded conditions, lacking ventilation and light. Women were guarded by male prison guards. Little progress was made on an agreement to allow the Office of the Prosecutor General to screen cases in Mitiga to determine the legality of detention and either send detainees for trial or release them.

69. It is estimated that between 4,000 and 7,000 migrants are held arbitrarily in detention centres run by the Department for Combating Illegal Migration. Numbers fluctuate and there is no registration system to record the movement of migrants in and out of detention. Armed groups, individuals and security forces bring migrants to detention centres with no legal process. There is no judicial review or other oversight mechanism. Various armed groups can gain access to detention centres to bring or remove migrants.

70. As described in the present report, conditions in migration detention centres are inhuman. Migrants are also held illegally in irregular detention centres managed by armed groups and so-called "connection houses" run by armed groups, smugglers and traffickers. Connection houses hold migrants for short periods, prior to their being transferred onto smuggling and trafficking routes.

Support

71. UNSMIL/OHCHR provided technical advice in early 2016 to the Constitution Drafting Assembly, including during a three-week workshop held in Oman.

72. UNSMIL/OHCHR has also supported workshops on the judiciary, prison management and international human rights mechanisms for Libyan officials and other counterparts, in cooperation with the International Commission of Jurists, the United States Institute of Peace and Lawyers for Justice in Libya. Between May and November, it also carried out 11 visits to places of detention in Tripoli, Misrata and Sabha. It provided advice to the Judicial Police and armed groups in Tripoli on the process of moving detainees from unofficial places of detention to official Judicial Police detention and to the Presidency Council regarding appropriate vetting procedures for establishing the presidential guard. It has also worked on the implementation of the United Nations human rights due diligence policy on United Nations support to non-United Nations security forces.

73. UNSMIL/OHCHR has advocated for the Presidency Council to appoint a focal point on justice issues, in the absence of an acting Minister of Justice. Implementation of the justice and rule of law provisions of the Libyan Political Agreement are also important, including through disarmament, demobilization and reintegration. Further efforts are needed on vetting and discipline systems for newly established security forces. There should be full implementation of the United Nations human rights due diligence policy, including appropriate mitigation measures, by the United Nations in Libya. The international community will also need to screen recipients of technical assistance and capacity-building programmes.

VI. Transitional justice

74. Despite the provisions of article 26 (5) of the Libyan Political Agreement, which commit parties to the implementation of Law No. 29 of 2013 on transitional justice, progress has been limited. The fact-finding and reconciliation commission provided for by the Law has not been established, nor has its Board been appointed. The victims'

compensation fund, also foreseen by the Law, has not been established. The provision requiring those still detained in relation to the 2011 conflict to be charged or released has also not been implemented.

75. Case 630/2012, in which 37 men associated with the Qadhafi regime faced charges related to the suppression of the "17 February revolution", is under review by the cassation chamber of the Supreme Court. The verdict of the Tripoli Court of Assize on 28 July 2015 convicted and sentenced to death by firing squad nine defendants, including Muammar Qadhafi's son, Saif al-Islam Qadhafi; former intelligence chief, Abdullah al-Senussi; and former Prime Minister, Al-Baghdadi al-Mahmudi. Other defendants received prison terms, while four were acquitted, and another was referred to a mental institution. There is no time limit set under the law for the cassation chamber to issue its decision.

76. While the trial represented the most prominent effort by the Libyan judiciary to bring former regime officials to account for their crimes, including gross human rights violations, it raised serious concerns with regard to the right to be informed promptly and in detail of charges; the right to a public trial; the right to be represented by counsel; the right to adequate time and facilities to prepare a defence; the right to call and examine witnesses; the right to be tried in one's presence; and the right not to be compelled to confess guilt or incriminate oneself. UNSMIL/OHCHR is engaging with the Prosecutor General's Office with a view to identifying what is needed for reform of the law and practice.

77. In its resolution 1970 (2011), the Security Council referred the situation of Libya since 15 February 2011 to the Prosecutor of the International Criminal Court. That gives the Court jurisdiction over crimes committed in Libya since 2011.[14] In November 2016, the Prosecutor briefed the Security Council and called for Libya to comply with its obligation to surrender Saif al-Islam Qadhafi to the court.[15] She noted that her Office was closely following Abdallah Al-Senussi's case and that in 2017 she intended to make the situation in Libya a priority and hoped to have new arrest warrants served.

78. On 31 August 2016, representatives of Misrata and Tawergha signed an agreement outlining a programme of compensation for victims of the 2011 conflict and the return of some 40,000 displaced Tawerghans. In order to come into force, the agreement requires endorsement by the Misrata and Tawergha municipal councils and the Government. UNSMIL/OHCHR staff worked closely with the two sides during a mediation process lasting 18 months. It advocated for the implementation of the agreement to be in full conformity with international human rights law, in particular ensuring that the right to return and compensation be pursued in parallel and not made conditional on one another.

Support

79. UNSMIL/OHCHR continued a dialogue with the Office of the Prosecutor General and other officials on issues regarding fair trial, criminal law reform, torture and ill-treatment. It called upon the international community to provide additional resources to allow the Office of the Prosecutor of the International Criminal Court to extend its investigations to crimes allegedly committed after 2011. It also advocated with the Government and other relevant counterparts to surrender Saif al-Islam Qadhafi to the Court pursuant to the request of the Court.

[14] See the ninth report of the Prosecutor of the International Criminal Court to the Security Council pursuant to resolution 1970 (2011) of 12 May 2015.

[15] See the twelfth report of the Prosecutor of the Court to the Security Council pursuant to resolution 1970 (2011) of 9 November 2016.

80. Throughout 2016, UNSMIL/OHCHR continued to support the Misrata/Tawergha dialogue committee, which met seven times between March and August in Tunis in implementation of a road map agreed on 18 December 2015, to reach the agreement signed on 31 August on compensation and returns. It also supported an expert meeting on reconciliation from 31 August to 2 September, which included a discussion on transitional justice in Libya.

VII. Conclusions and recommendations

81. The findings of the present report are consistent with those described in previous reports of the High Commissioner on Libya, including the report of the OHCHR investigation on Libya issued in February 2016 (A/HRC/31/47). The recommendations in that report, including those describing the further assistance needed to address the human rights situation in Libya, remain relevant. The present report seeks to highlight those recommendations that are considered most urgent, including in terms of further assistance needed, to ensure progress in the protection of human rights in Libya.

82. The findings of the present report demonstrate that armed groups, some of whom act on behalf of the State, are primarily responsible for grave violations and abuses of human rights in Libya. They hinder the effectiveness of support and impede the implementation of the reforms needed to ensure compliance with human rights standards and the re-establishment of the rule of law. It is therefore critical that the Government moves towards the establishment of a professional army and police and other security forces; prioritizes disarmament, demobilization and reintegration programmes; and implements the justice and rule of law provisions of the Libyan Political Agreement, including through the receipt of focused assistance in the areas described below.

83. The Human Rights Council also has an important role to play in complementing and strengthening efforts towards ensuring accountability in Libya.

84. Recognizing the urgent need to bring an end to the widespread human rights violations and abuses being committed in Libya, the High Commissioner appeals to all parties to the conflict to cease hostilities and support the Government of National Accord, to move towards a State based on respect for human rights and the rule of law.

85. Accordingly, the High Commissioner recommends that all parties to the conflict:

(a) Desist immediately from all violations of international human rights law and international humanitarian law and abuses of human rights, including those amounting to crimes under international law;

(b) Declare that such acts will not be tolerated and remove those suspected of such acts from active duty, pending investigation.

86. The High Commissioner recommends that the Government of Libya:

(a) Address urgently the proliferation of armed groups, including through disarmament, demobilization and reintegration, and the building of national security forces under the command and control of the State;

(b) Institute a comprehensive vetting programme compliant with standards of due process to remove and prevent the recruitment into the State security forces of individuals about whom there are reasonable grounds to believe they have been

involved in violations of international human rights law or international humanitarian law, or abuses of human rights;

(c) Address the situation of detainees, whether foreign or Libyan nationals, including by ensuring that the State is in control of all detention facilities and that cases are screened with a view to detainees being released or charged and judged in a trial affording all procedural guarantees, in accordance with Libyan law and international standards;

(d) Ensure access to legal counsel and courts for detainees and their families to seek legal review. Monitoring organizations should be permitted regular, unhindered and without-notice access to all places of detention;

(e) Ensure the proper treatment of foreign or Libyan nationals in detention or deprived of liberty, including by eliminating torture and other ill-treatment, including sexual violence. Access to medical treatment and sufficient food and water must be ensured;

(f) Address urgently the situation of migrants to ensure that all individuals, regardless of their status, are able to enjoy their human rights, including by decriminalizing irregular migration, adopting an effective refugee status determination procedure and implementing alternatives to detention;

(g) Ensure protection for the judiciary and its independence;

(h) Extend full cooperation to and support for the International Criminal Court by assisting its investigations and complying with its rulings;

(i) Facilitate a voluntary, safe and dignified return of persons who are currently internally displaced, including the Tawerghan community;

(j) Appoint a focal point on justice issues.

87. **The High Commissioner recommends that the international community:**

(a) Provide the Office of the Prosecutor of the International Criminal Court with the resources necessary to investigate and prosecute the alleged crimes under international law committed in Libya since 2011;

(b) Prioritize support for the demobilization, disarmament and reintegration of members of armed groups, to be conducted in compliance with international human rights standards;

(c) Apply a due diligence framework to programmes that support the security forces and stringent screening procedures to recipients of technical assistance;

(d) Ensure protection of and practical assistance to Libyan human rights defenders, including by facilitating emergency visas, temporary shelter and relocation where necessary, and consider the establishment of a fund to support human rights defenders at risk;

(e) Consider establishing a programme of medical support to victims of human rights abuses and violations;

(f) Ensure respect for the principle of non-refoulement and provide protection, in accordance with international law, for those with a well-founded fear of persecution;

(g) Ensure that any cooperation with the Government of Libya, including in relation to migration, is compliant with international human rights standards.

88. **The High Commissioner recommends that the Human Rights Council remains seized of the progress made towards accountability and the situation of human rights in Libya.**

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Technical assistance and capacity-building

Situation of human rights in Guinea

Report of the United Nations High Commissioner for Human Rights

Summary

In this report, submitted pursuant to Human Rights Council resolution 31/29, the United Nations High Commissioner for Human Rights describes the human rights situation in Guinea in 2016 and makes recommendations to address various human rights problems. He also provides information on the activities of the country office of the High Commissioner for Human Rights in Guinea and the results achieved through the technical assistance provided by the latter.

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I. Introduction

1. In this report, submitted pursuant to Human Rights Council resolution 31/29, the High Commissioner assesses the human rights situation in Guinea in 2016, reviews the activities of the country office of the High Commissioner for Human Rights in Guinea and makes recommendations to the Government and the international community.

II. Main political and economic developments affecting human rights

2. The year 2016 saw numerous political and social upheavals. In February, the two main trade union confederations called a general strike to demand, inter alia, that the Government lower the price of petroleum products and improve the living and working conditions of public sector workers and those working in some public-private companies.

3. Negotiations led to reforms to the public sector classification system and an increase in the salary scale for public sector workers.

4. In March and April, the political parties of the republican opposition coalition, led by the Union des forces démocratiques de Guinée (UFDG), called on citizens to observe "dead town" days of protest so as to force the Government to lower fuel prices.

5. These protests paralysed the public and private sectors in Conakry and led to clashes between law enforcement forces and youths from the suburbs. Several people were injured and around 10 arrests were made during the clashes.

6. In April, the women members of UFDG attempted to organize a peaceful march to demand the release of the party leader's bodyguards, who had been arrested in February as part of the inquiry into the fatal shooting of a journalist working for the private press outside the headquarters of their political movement. The march, which was due to take place in the commune of Kaloum, was first prohibited and then halted by law enforcement on the orders of the Governor of Conakry.

7. In August, the republican opposition organized a peaceful march, inviting its activists and supporters, as well as "all Guinean citizens who love freedom and justice to participate in a peaceful march planned for 16 August in order to express, through their mass presence on public thoroughfares and in public spaces, their rejection of current political, economic and social governance practices". The march was authorized by the authorities and organized in coordination with the Governorate of Conakry and the security forces.

8. Despite the coordination between the march's organizers and the political authorities and security services, there were clashes between protesters and law enforcement officers at the Bambeto roundabout, in the commune of Ratoma. The clashes led to the death of a young male protester and gunshot injuries to three other protesters: a man, a woman and a child.

9. In September, the President met with his main opponent, UFDG leader Mamadou Cellou Dalein Diallo, as part of periodic consultations on matters of national interest. This meeting marked the beginning of a period of political calm. The two political rivals agreed on the need to prioritize dialogue over confrontation in order to safeguard peace and national unity.

10. In September, an inter-Guinean political dialogue between the President's camp and the opposition was launched, with eight items on the agenda: the electoral lists, the

organization of municipal and local elections, the Independent National Electoral Commission, respect for the constitutional principle of the neutrality of the public administration, the identification and prosecution of the perpetrators of the violence committed during opposition protests over the 2013 legislative elections, compensation for the victims of that violence, the establishment of the Supreme Court and the release of arrested and imprisoned persons.

11. As a result of that dialogue, the Presidential camp and the opposition agreed on all of the agenda items and signed a comprehensive agreement intended to bring the crisis to an end. The agreement was signed in the presence of representatives from the international community, including the United Nations, the European Union, the International Organization of la Francophonie, the Economic Community of West African States, the ambassador of the United States of America, the ambassador of France and Guinean civil society, as observers. The conclusion of the agreement, which is to be submitted to the National Assembly for adoption, has defused the political situation and brought an end to the street demonstrations that had become a source of violence and human rights violations.

III. Situation of human rights

A. Violations committed in the context of public protests

12. The right to freedom of peaceful assembly and association is guaranteed by article 20 of the Universal Declaration of Human Rights, article 21 of the International Covenant on Civil and Political Rights and article 10 of the Guinean Constitution.

13. Unlike the previous year, few violent confrontations linked to political demands were observed. However, on 16 August, following a political protest organized by the opposition, a man was killed by a bullet allegedly fired by a police officer from a special mobile intervention unit. The victim was hit in the neck while on the balcony of his apartment. Three other persons were also injured: a 2-year-old child; a woman, who suffered a leg injury; and a 20-year-old man, who was riding a motorcycle at the scene of the incident, which took place in the Bambeto area of Conakry. All of the victims claimed to have been injured by law enforcement. The police officer suspected of firing the shot that caused the death was arrested and placed in detention. The shot was fired when police officers were attempting to prevent a group of youths from barricading the road on their return from the protest.

14. On 19 April, law enforcement agencies in the commune of Kaloum prevented a march by female members of the opposition who were demanding the release of members of the UFGD opposition party who had been placed in pretrial detention following the fatal shooting of a journalist at their party's headquarters. The protesters lodged a complaint of violation of the right to freedom of demonstration against three police officers and gendarmes, who were leading the operations, given that they had met all of the relevant legal requirements.

B. Right to physical and psychological integrity

15. The right to physical and psychological integrity is guaranteed under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and article 6 of the Guinean Constitution.

16. Respect for the right to physical and psychological integrity by defence and security forces remains a cause for concern, particularly with regard to criminal suspects. The

pursuit of confessions and information often pushes the security forces to use torture and ill-treatment against suspects.

17. In April, staff of the country office followed up two cases of torture committed during questioning and interrogation, one by a mixed unit comprising police officers and gendarmes, and the other by a special mobile intervention unit. In both cases, the units usurped the functions of criminal investigation officers, since their tasks are normally limited to arresting suspects and do not include interrogations. The Ministry of Security and Civil Protection imposed disciplinary measures, including the suspension of 12 officers and agents involved in one of the cases.

18. In March, a joint unit comprising police officers and gendarmes, Crime Squad No. 8, arrested a man on suspicion of theft. Officers from the unit tortured him for three consecutive days to force him to admit his involvement. He was then sent to an investigation department within the gendarmerie, where he spent three days in handcuffs.

19. The country office documented other cases that constituted cruel, inhuman and degrading treatment, recording 26 injured persons, 25 of whom were admitted to medical centres following violence and ill-treatment at the hands of soldiers during an incident in the prefecture of Mali. The victims included three women.

20. During that incident, which took place in June, the commander of an infantry camp in Mali, Moyenne-Guinée, forced a driver to leave his lorry, slapped him and ordered his guard to whip him. In response, the population demanded that the prefect order the commander to leave the prefecture. This was followed by a confrontation during which soldiers made excessive use of lethal weapons by firing live ammunition. Twenty-five persons were injured during these clashes, including five men who were shot, while shops were set alight and livestock killed. The military region command and the public administration convinced the commander to leave the prefecture. Furthermore, staff of the country office came across a suspect in the reception area of a police station whose feet had been shackled with iron rings. A criminal investigation officer explained that the suspect had been shackled to prevent him from escaping, because the police station did not have a holding cell. The staff remarked on the inhuman nature of the practice, and the rings were removed from his feet.

C. Right to freedom and security

21. The right of the individual to freedom and security is recognized by international human rights instruments, namely the Universal Declaration of Human Rights (art. 3) and the International Covenant on Civil and Political Rights (art. 9), and by the Guinean Constitution (art. 9). The right to freedom is a pillar of human rights; the deprivation of that right must be justified by a procedure established by law.

22. In the course of the year, staff of the country office made 102 visits to places of detention, including prisons and police custody centres, and recorded 26 cases of arbitrary arrest and 62 cases where the maximum period for police custody, 48 hours, was exceeded. Thanks to the office's intervention and its arguments in their favour, 74 persons were released, including 22 minors and 7 women.

23. The country office reports that the poor detention conditions described in the previous report saw no improvement in 2016. The prison construction and renovation work begun in 2014-2015 is currently suspended. Overcrowding, squalor, lack of health care, malnutrition and undernourishment have increased significantly, including for women and children. In the vast majority of prisons, including the main prisons in Conakry and Kindia, many women are detained in cramped facilities, where nothing is done to take their particular needs into account. Juvenile wings and cells are also occupied by adults, some of

whom are accused of serious offences. The prison authorities have explained this situation by citing the high number of detainees and the lack of space.

24. In May, medical examinations given to detainees in Conakry prison detected 56 cases of beriberi, an illness that has led to the death of one inmate. Two of the caterers appointed by the Ministry of Justice to provide food for detainees informed the Office of the United Nations High Commissioner for Human Rights that they were no longer able to feed detainees to an acceptable standard because they had not been paid for several months. The same situation has been observed in the country's other prisons. The country office found five detainees in Guinée forestière who were suffering from paralysis of the legs. According to the detainees and the prison authorities, the paralysis was linked to various factors, including a lack of vitamins in their diet; overcrowding, which prevented recreational activities; and infrequent medical check-ups. The country office also noted shortages in the pharmacies at the Yomou and Lola prisons, leaving detainees without appropriate medical care. The judicial and prison authorities request support for partners operating in the area of health.

25. The country office is beginning to observe the positive effects of its awareness-raising sessions conducted through radio broadcasts and presented by human rights defenders. Indeed, citizens are submitting increasing numbers of cases to the country office through the monitors of the Office of the High Commissioner for Human Rights. These monitors are members of civil society whom the Office has trained to track the human rights situation during elections. For example, a group of parents contacted the country office after their children (seven young boys in total) were questioned by officers of mobile squadron No. 10 in Nzérékoré, who demanded payment of 100,000 Guinean francs (US$ 12) per child as a "summons fee".

26. The country office's intervention allowed the authorities to take over the case and to ensure compliance with the relevant procedures.

D. Right to health

27. The Ebola virus disease, which had a significant impact on Guinea between 2014 and 2016, highlighted the weaknesses in the country's health system. In March, after more than four months without a new case, the illness reappeared in Guinée forestière, causing the deaths of seven persons, including three women. The disease was contained by stepping up awareness-raising campaigns, particularly those aimed at women, who, according to partial statistics, are disproportionately affected by the disease, and by implementing isolation measures. The health authorities have launched a vaccination campaign for contact persons and health workers on the front line in the fight against the virus. In August, the World Health Organization declared the end of the Ebola epidemic in Guinea.

28. As part of the post-Ebola resilience plan that the country is currently implementing with the assistance of development partners, general reforms to the health system have begun. The Donka University Hospital in Conakry, the largest hospital in the country, has been undergoing renovations since 2015. The Government has also begun work to build improved health centres in Conakry and other areas of the country to facilitate the rapid treatment of diseases with the potential to cause an epidemic.

29. In August, the results of the competitive examinations organized in 2015 to recruit 2,950 health workers to the public sector were published.

30. In November, the first stone was laid in the construction of the Pasteur Institute. The Institute will permit the analysis of samples of infectious diseases; the lack of such a facility led to the rapid spread of Ebola between March 2014 and August 2016.

E. Fight against impunity

31. Despite the notable efforts made by the Government to reform the justice and security sectors, impunity remains a major challenge. In his previous report, the High Commissioner reported that many criminal cases involving law enforcement officials remained pending before the courts. At the time of the present report's publication, no progress had been recorded in those cases. Despite regular summonses, the three gendarmes mentioned in cases involving violations of the right to life and acts of torture continue to refuse to appear before the courts, claiming that their superiors have not authorized them to do so.

32. In April, following the dissemination on social networks of images depicting acts of torture and inhuman and degrading treatment inflicted by officers of Crime Squad No. 8, located in the Kakimbo forest in the commune of Ratoma, Conakry, on a young man suspected of involvement in an armed attack, the Ministry of Security and Civil Protection suspended the 12 officers concerned, among whom were both gendarmes and police officers. Human rights defence associations have lodged a complaint with the courts on behalf of the victim and have brought civil actions.

33. The Judicial Investigation Directorate of the gendarmerie received a request for judicial assistance from the prosecutor's office at the Dixinn court of first instance; it began to question the alleged perpetrators of these human rights violations, but then brought proceedings to a halt without explanation. A criminal investigation officer questioned by the Office of the High Commissioner for Human Rights claimed that the proceedings were halted on the instructions of the authorities, without providing more details. The Ministry of Security and Civil Protection lifted the suspension of the alleged perpetrators of these acts of torture, thus allowing them to resume their duties. However, the complaints remain pending before the courts.

34. In the days that followed the events of June 2016 involving the commander of the infantry camp in the prefecture of Mali, the Chief of General Staff of the Armed Forces relieved the officer of his duties. The Labé court of first instance and the military court opened a judicial investigation. The Minister of Justice attended the scene to determine the facts. The country office deployed a team on the ground and reported on these events to the competent authorities and recommended a number of measures. However, to date, the legal proceedings remain pending before the courts, and the victims are still awaiting justice.

35. Other major cases of mass human rights violations are yet to be dealt with. The case relating to the events of 28 September 2009, during which more than 150 persons were killed and more than 100 women raped, remains pending before the courts. Despite the notable progress made in the investigations, particularly the charging of 14 persons, including Captain Moussa Dadis Camara and General Mamadouba Toto Camara, the President and Vice-President of the junta in power at the time of the events, and the willingness of the Guinean authorities at all levels to cooperate with the international community, particularly the International Criminal Court, the victims are yet to obtain justice. Moreover, some of those charged with crimes against humanity by the courts continue to occupy positions of significant responsibility. For example, in March, the Head of State appointed a general who had been charged in relation to this case to the post of Governor of Conakry. According to the judicial authorities, the trial could not go ahead in 2016 because two key individuals could not be questioned.

36. Victims' associations commemorated the seventh anniversary of the events of September 2009 in the hope that in 2017 a fair trial will be held that leads to the sentencing of the perpetrators of these crimes and to reparations for violations suffered. Furthermore, 4 of the 14 persons charged are in pretrial detention, 2 of them since 2010, thus constituting arbitrary detention under the Code of Criminal Procedure, which fixes the maximum

duration of pretrial detention at 12 months for most offences and 24 months for more serious offences such as paedophilia, international drug trafficking and endangering State security.

37. The case of the alleged attack on the Brazilian company Zagope by villagers from Zogota in the region of Nzérékoré, Guinée-Forestière, and the attack by defence and security forces against inhabitants of that village on the night of 3 August 2012, remains pending.

F. Administration of justice and conditions of detention

38. In July, the National Assembly adopted new legislation, a new Criminal Code and a new Code of Criminal Procedure, which were promulgated in October. This legislative reform reflects major progress in many areas. A definition of torture that complies with the definition contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was introduced for the first time. The new Criminal Code incorporates into Guinean law the provisions of many international human rights instruments, such as the Rome Statute of the International Criminal Court, and the observations of treaty bodies, including the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

39. The death penalty does not feature in the new Criminal Code; the Code no longer provides for the punishment of any offence by that penalty.

40. This reform also confirmed the June 2015 reorganization of the judiciary, which aimed to bring the justice system closer to the people and to reduce the long periods of pretrial detention caused by the failure of the assize courts to sit regularly. The two assize courts, which previously sat in Conakry and Kankan and which were competent to rule on criminal cases, have been disbanded in favour of courts of first instance in each prefecture, including three in Conakry, which are now competent to rule on such cases.

41. However, this reorganization has yet to take effect. In August, the principal prosecutor's office at the Conakry court of appeal wrote to the Indictments Chamber to formally request that it no longer issue committal orders committing defendants to the assize courts. However, most courts of first instance lack the staff, premises and financial and logistical resources to function properly, consequently placing accused persons in a legal impasse. Hundreds of accused persons are currently being held in prisons around the country without knowing when they will stand trial, the court competent to try them having been disbanded in favour of new courts that are not yet operational.

42. For example, in December 2016 the Conakry prison, which houses three-quarters of detainees, held 1,643 persons, including 643 convicted persons, 67 women and 128 minors. Some accused persons have been awaiting trial for more than 10 years, a situation constituting arbitrary detention (see paragraph 36).

43. The weakness of the justice system has meant that many citizens have lost confidence in it. Revenge and mob justice are increasing at an alarming rate in Guinea. The country office has been informed of a total of 17 cases of persons (all men) who were allegedly killed as a result of mob justice in 2016, including five persons who were abducted from the security services to be lynched. In June, five suspected motorcycle thieves were burned alive by an angry crowd in Nzérékoré. In March, two young men met the same fate, for the same reason, in Macenta, in the administrative region of Nzérékoré, Guinée forestière. Similar cases of mob justice have been observed in the capital, Conakry; in Dabola, Siguiri and Kankan in Haute-Guinée; and in Mamou and Labé in Moyenne-Guinée.

44. The perpetrators of these lynchings explain their actions by their lack of trust in the justice system. Some of the suspected criminals killed by the population were allegedly repeat offenders who had received long prison sentences, but who had been released before completing them. Others had been arrested and handed over to the security services or the justice system, but had been released without trial.

45. These lynchings are ordered and carried out by ordinary citizens who attack police, gendarmerie, prison and justice system premises to remove suspects and accused persons before killing them, with complete impunity.

G. Gender-based violence

46. In his previous report, the High Commissioner recommended that Guinea strengthen its strategies to combat female genital mutilation, including excision, and to combat all forms of discrimination against women and girls. In August, the Prime Minister launched a national campaign against excision, which affects 97 per cent of Guinean women and girls according to the latest national demographic and health survey, carried out in 2012.

47. Despite the efforts of the Government and its national and international partners, gender-based violence remains a major cause for concern in Guinea. At the national level, in 2016 the Office for the Protection of Gender, Children and Morals recorded 643 cases of gender-based violence, including 117 cases of rape. Of those 117 cases, 97 were committed against minors, 71 of whom were girls. More than 10 cases of rape, in all of the country's natural regions, were submitted to the country office in 2016. The majority concerned girls aged from 2 to17 years and were committed by a family member, neighbour or teacher. The suspected perpetrators in these cases were arrested, brought before the courts and are awaiting trial. Staff of the country office met with the Office for the Protection of Gender, Children and Morals to explore why young girls aged up to 13 years are the most commonly targeted group. The Office is currently conducting a study into the causes of such violence.

48. However, in many of the cases of rape reported to the country office, proceedings are abandoned because of the following reasons: shortcomings in the security services; the mediation and influence of parents, public figures, religious leaders, politicians or military chiefs; and arrangements between victims, perpetrators, security services or judges, in violation of the provisions of article 1 of the Code of Criminal Procedure.

49. In July 2016, the Government made a statement during a campaign launch workshop and in the press asking all authorities to ensure that no cases of excision occurred during the school holidays. However, the country office noted that excision camps were held in most villages in Guinée forestière. Despite a number of complaints and trials, the sentences handed down remain lenient and are limited to suspended prison sentences and fines.

IV. Cooperation to promote and protect human rights

A. Transitional justice and national reconciliation process

50. In 2016, the country office of the United Nations High Commissioner for Human Rights in Guinea made a significant contribution to the transitional justice process, which is intended to allow Guinea to shed light on its past, allocate responsibility, redress wrongs

and undertake actions to ensure that human rights violations are not repeated.[1] The country office provided expertise in developing and validating national consultation tools and contributed to the success of the various stages of the national consultations, from the development of the project through to the dissemination of the recommendations.

51. From 15 to 25 February, the country office took part in the organization of national pre-consultation sessions in Conakry, Boké and Kindia. This exercise made it possible to test the tools that had been developed and to recommend ways of improving them. From 7 March to 11 April, the country office was involved in providing technical training to the international firm recruited to ensure that the national consultations, which took place in the seven administrative regions of the country, were in line with relevant existing international standards. Following the consultations, the Provisional Commission for Reflection on National Reconciliation, with technical support from the country office, held a national workshop on 31 May to present the final report on the national consultations. With regard to the participatory nature of the consultations, the country office took part in the information session for civil society and professional media organizations that was held from 13 to 27 June to publicize the results of the national consultations to the general public. Throughout the process, the country office held discussions with officials of victims' associations and encouraged them to pool their resources and work together to defend their rights.

52. On 29 June, the Provisional Commission for Reflection on National Reconciliation organized an official ceremony in Conakry to present to the President of the Republic the interim report on the national consultations in support of the national reconciliation process in Guinea. The contribution made by the country office to the organization of the national consultations was highly appreciated by all the stakeholders involved.

53. Furthermore, from 26 to 29 July, the country office organized a training session for all members of parliament entitled "Strengthening parliament as a guardian of human rights and a guarantor of the national reconciliation process in Guinea contributes to peacebuilding". The subject chosen for the training session helped to raise legislators' awareness of their responsibilities in promoting and protecting human rights and of the need to shed light on the past and to allocate responsibility. At the end of the workshop, women parliamentarians committed themselves to bringing together political stakeholders, making quality contributions to the drafting and adoption of a law on the establishment of a truth commission and striving to better incorporate the human rights approach in parliamentary work.

B. Cooperation with international human rights protection mechanisms

54. On 2 and 3 June, the country office provided a coalition of non-governmental organizations (NGOs) involved in combating the trafficking and exploitation of children in Guinea with technical support in organizing and conducting a workshop on the planning of advocacy activities for the implementation of the recommendations made to Guinea by:

[1] According to the International Commission of Inquiry into the events of 28 September 2009, "in order to enable the people of Guinea to make a fresh start, it is also necessary to shed light on the painful past that Guinea has experienced since its independence, with a view to promoting national reconciliation. It is in fact impossible to promote reconciliation, with respect for each individual and each sector of society, without making the search for truth a prerequisite for this much needed exercise. This historical clarification has a number of benefits. In addition to relieving the suffering of victims, it would help lay the foundations for policies and mechanisms aimed at ensuring that the same mistakes are not made again".

(a) The Committee on the Rights of the Child (following consideration in 2013 of the second periodic report of Guinea on the implementation of the Convention on the Rights of the Child);

(b) The African Committee of Experts on the Rights and Welfare of the Child (following consideration in 2014 of the initial report of Guinea on the implementation of the African Charter on the Rights and Welfare of the Child);

(c) The Human Rights Council (following the second universal periodic review of Guinea in January 2015), particularly the recommendations concerning the rights of the child.

55. In May, the country office helped the Ministry of National Unity and Citizenship to prepare a technical note on the organization of a midterm review of the implementation of the recommendations of the second universal periodic review of Guinea in 2015. Through this technical note, the Minister sought support from the Government for implementation of those recommendations before the next deadline in 2019. The country office continued to provide technical support to the Ministry in organizing a national conference on human rights, scheduled to take place before the end of 2016, that would also include an implementation plan for the recommendations made in the course of the 2015 universal periodic review and those made by the various treaty bodies.

56. During the reporting period, the country office encouraged the various stakeholders to provide input and formulate recommendations for the dialogue to be held at the thirty-fourth session of the Human Rights Council on the follow-up to resolution 31/29, at which particular emphasis would be placed on the fight against impunity.

57. With regard to special procedures, the Independent Expert on the enjoyment of human rights by persons with albinism accepted an invitation to visit Guinea in the second half of 2016.

C. Strengthening the rule of law

58. As in 2015, the country office of the United Nations High Commissioner for Human Rights in Guinea continued to support Guinea in strengthening the rule of law, including in the areas of security, justice and governance of the mining sector.

59. As part of the security sector reform process, technical support was provided in partnership with the Strategic Orientation Commission for Security Sector Reform. This support resulted in human rights being incorporated into induction training programmes for the defence and security forces (police and gendarmerie academies, military schools and training centres in Guinea) through the development and validation of four training modules in human rights and the training of a pool of 40 trainers and in-service instructors at these institutions. The country office provided technical expertise to the Ministry of Security and Civil Protection in drafting and publishing a code of ethics for the national police in Guinea. According to the provisions of Decree No. D/2016/262/PRG/SGG of 25 August 2016, which governs this code, the national police is required to perform its duties in accordance with the Universal Declaration of Human Rights, international conventions, the Constitution and the law.

60. From 9 to 12 August, the country office, in accordance with the recommendations made by the "Defence" Sectoral Committee on Security Sector Reform, held an information and awareness-raising workshop in Samoreya camp in Kindia for 178 members of the Gangan battalion, including three women, who were awaiting deployment on an international peacekeeping mission. During this capacity-building exercise, which was organized in collaboration with the Chief of Staff of the Armed Forces and the International

Committee of the Red Cross, with the support of the United Nations Peacebuilding Fund, participants were made aware of various issues relating to human rights, international humanitarian law in the context of peacekeeping, the fight against gender-based violence (with an emphasis on the relevant guidelines issued by the Secretary-General of the United Nations) and the protection of civilians.

61. With regard to the reform of the justice sector, the country office continued to contribute to the work of the national commission responsible for revising the Criminal Code, the Code of Criminal Procedure, the Code of Military Justice and the Civil Code.

62. The revised Criminal Code and the revised Code of Criminal Procedure were adopted on 4 July by the National Assembly and promulgated on 7 October by the President of the Republic. They take full account of human rights and specific issues related to gender-based violence, in accordance with the relevant international legal instruments to which Guinea is a party.

63. The country office focused on strengthening coordination mechanisms for stakeholders working to combat gender-based violence. To this end, it revitalized regional committees for the prevention and management of gender-based violence in the regions of Nzérékoré and Kankan. This approach made it possible to monitor the actions of stakeholders in the fight against such violence, develop partnerships, expand existing mechanisms and strengthen capacities for collecting, processing and exchanging information.

64. The country office also conducted a campaign to raise women's awareness of their role in promoting and protecting human rights in general and fighting gender-based violence in particular. The women concerned, who were selected from women's groups, have begun to raise the awareness of rural women through a media-supported campaign that has reached over 150 individuals.

65. The country office is also engaged in drafting and finalizing the United Nations Peacebuilding Fund project "Support for justice sector reform and the fight against impunity in Guinea" in partnership with the United Nations Development Programme. Developed in response to needs that had repeatedly been expressed by the Government of Guinea, this project focuses on three main goals: making the military justice system operational, improving the criminal justice system and establishing access to justice, especially for women and minors.

66. In the area of mining sector governance, the country office provided technical and financial support in March, April and July to the National Assembly commissions on mining and the environment to enable them to conduct two field visits to Haute-Guinée (Kouroussa, Kankan, Siguiri and Dinguiraye) and Basse-Guinée (Conakry, Boké, Boffa, Dubreka and Forécariah), which are considered to be risk areas. These field visits enabled the members of these commissions to monitor the implementation of national legislation on mines and the environment, transparency in mineral-resource management and the mainstreaming of human rights in the protection of the environment and mining communities. In September and October, the country office undertook capacity-building activities in each administrative region of the country aimed at members of consultation committees in mining towns to ensure that greater account was taken of human rights concerns in conflict prevention and management in mining areas in Guinea. The participation of regional governors in each of these regional activities reflected the importance of human rights issues in mining areas in view of their contribution to the national economy.

67. As to the national independent human rights institution, during the reporting period it was involved in providing training to law enforcement officials on the occasion of the United Nations International Day in Support of Victims of Torture in June and then to local

consultation committees in mining towns in October. Lastly, during the session held to approve human rights training programmes for the defence and security forces, the national independent human rights institution made a number of important contributions, particularly in relation to the issues of detention and law enforcement. However, the capacity of this institution must be strengthened to ensure its operational independence and to enable it to produce reports under its mandate, on the human rights situation, in accordance with article 29 of the Act on its organization and operation.

68. The celebration of the United Nations International Day in Support of Victims of Torture, on 26 June, was an opportunity for the country office to raise awareness among law enforcement officials (members of the armed forces, the police, gendarmes, judges) of issues related to torture and the Government's commitment to tackling this practice in Guinea.

69. With respect to action to combat violence against women, the country office, in partnership with the international polyclinic and the forensic institute of Conakry, held a training workshop in July for 54 criminal investigation officers and judges, including six women stationed in Conakry, on their role in tackling gender-based violence with a view to enhancing the ability of the criminal justice system to address the issue of medical certificates.

70. The country office played an active role in reviewing the United Nations joint programme for the administrative region of Kankan. The review was conducted from 6 to 10 June in the prefectures of Siguiri, Kankan, Kérouané and Mandiana by a team from the inter-agency monitoring and evaluation group, which is made up of representatives of the offices of the United Nations Resident Coordinator, the United Nations High Commissioner for Human Rights, the Food and Agriculture Organization of the United Nations, the United Nations Development Programme and the United Nations Children's Fund in Conakry and the United Nations system team in Kankan (the offices of the United Nations Children's Fund, the United Nations Development Programme, the United Nations Population Fund, the World Health Organization and the World Food Programme in Kankan). This exercise made it possible to identify the strengths and weaknesses of the joint programme and to better target the support that will be provided by the United Nations to the development of the region (including with regard to specific human rights issues) in the years to come.

71. During the reporting period, the country office, together with members of the United Nations country team, contributed to the development of the common country assessment for 2016 and the drafting of the United Nations Development Assistance Framework 2018-2022. Within this framework, the country office ensured compliance with the principles of United Nations programmes, including by ensuring the incorporation of a human rights and gender-based approach.

D. Support for civil society organizations

72. The country office has maintained and strengthened its partnership with civil society organizations and its support for them. Actions have focused on raising awareness and building the capacities of civil society stakeholders and the technical, logistical and financial support that they are given. Particular attention should be drawn to the following actions:

(a) The organization of a training workshop on techniques for conflict prevention and management for members of the joint security and confidence-building units along the northern border of Guinea (Moyenne-Guinée) and in Labé and Mamou from 18 to 26 August, which was run by the Mano River Women's Peace Network;

(b) The provision of technical support to the campaign to raise awareness of the promotion and protection of women's rights, organized by the Fondation internationale Thierno et Mariam Thierno, from January to April, in various communes in Conakry, in partnership with the German embassy and the country office;

(c) The provision of technical support to the strategic planning workshop for the selection of women candidates in local elections, organized by the National Democratic Institute with financial support from the United States Agency for International Development and the United Nations Development Programme in May;

(d) The provision of technical support to the NGO Alliance pour la promotion de la gouvernance et des initiatives locales (Alliance to promote governance and local initiatives) over the course of three awareness-raising sessions on human rights and youth employment attended by 70 participants;

(e) The provision of technical support to the NGO Jeunesse-Ecole-Avenir (Youth-School-Future) during a session for 200 young people to raise awareness of human rights and peace held in March and participation in a session to raise awareness of democracy and African leadership in conjunction with 15 members of the Catholic association Enseignants et éducateurs de Guinée (Teachers and educators of Guinea);

(f) The provision of technical and financial support to a consortium of 35 human rights NGOs engaged in advocating for the abolition of the death penalty and the adoption of the draft criminal code, the draft code of criminal procedure, the draft code of military justice and the draft civil code, as revised by the National Assembly at its legislative session in April;

(g) The organization in August of two training workshops for 38 human rights defenders and members of human rights NGOs operating in the 15 prefectures of Guinée forestière and Haute-Guinée;

(h) The organization in October of a training workshop for 35 members and officers of the NGO Action pour la protection des droits de l'homme (Action for the Defence of Human Rights), operating in the prefecture of Lola in the Nzérékoré region.

73. Lastly, the country office organized several consultation meetings and coordination actions on its premises with NGOs that addressed the current sociopolitical situation from a human rights perspective, the activities planned in support of the national consultations for reconciliation in Guinea and the support afforded to the local election process. These meetings provided an opportunity to share expertise between civil society organizations and the country office and to facilitate the monitoring of reported cases of human rights violations.

V. Conclusions and recommendations

74. **The High Commissioner acknowledges the efforts made by the Government in implementing its action plan on national reconciliation. It has conducted inclusive and participatory national consultations throughout the national territory.**

75. **The Government has also initiated significant reforms of its criminal justice system that take many human rights concerns into account. The most important aspects of these reforms include the abolition of the death penalty, the introduction of a definition of torture and an appropriate penalty for that offence, the abolition of magistrate's courts and the establishment of new courts of first instance and courts of appeal.**

76. However, the Office of the High Commissioner for Human Rights notes that little progress has been made in the fight against the impunity enjoyed by the perpetrators of human rights violations, particularly those who belong to the security or defence forces. Impunity also remains a feature of the fight against gender-based violence, including female genital mutilation, the perpetrators of which have hardly ever been brought before the courts.

77. In the light of the observations contained in this report, the Office of the High Commissioner for Human Rights recommends that the Government of Guinea:

(a) Strengthen the fight against impunity at all levels, including among members of the defence and security forces, specifically by ensuring that trials relating to the events of 28 September 2009 go ahead;

(b) Suspend from duty the individuals charged in cases relating to the events of 28 September 2009, pending the completion of the judicial process;

(c) Give effect to the reorganization of the judiciary to allow trials to be held on a regular basis and to end wrongful pretrial detention;

(d) Raise public awareness of the explicit ban on taking the law into one's own hands and prosecute the perpetrators of mob justice;

(e) Strengthen the implementation of strategies for combating female genital mutilation, including excision, and all forms of discrimination against girls and women;

(f) Train members of the judiciary in the obligation to respect gender equality when formulating their judgments, particularly those decisions which concern gender-based violence (such as female genital mutilation, etc.);

(g) Implement the recommendations made by the Provisional Commission for Reflection on National Reconciliation on the basis of the national consultations, in particular the recommendation concerning the establishment of a body responsible for conducting the national reconciliation process;

(h) Provide the national independent human rights institution with the financial and logistical resources that it needs to function effectively.

78. The Office of the High Commissioner for Human Rights recommends that the international community:

(a) Maintain the assistance needed to continue the reform of the defence and security forces and the judiciary;

(b) Continue providing assistance to the Government for the post-Ebola recovery plan;

(c) Provide the Government with the necessary financial and technical assistance to support its efforts to abolish female genital mutilation, including excision, and to enhance the realization of women's rights.